

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ‘ A ‘ Bench, Hyderabad**  
*(Through Video Conferencing)*  
**Before Shri A.M. Alankamony, Accountant Member and**  
**Shri S.S. Godara, Judicial Member**

ITA No.41/Hyd/2020		
Assessment Year: 2011-12		
Income Tax Officer Ward-1(1) Hyderabad	Vs.	M/s. AMR Global Industries Ltd, Hyderabad PAN:AAGCA7667L
(Appellant)		(Respondent)
Assessee by:		Adv. Hema Kataria
Revenue by:		Sri Rajendra Kumar, CIT(DR)
Date of hearing:		01/12/2021
Date of pronouncement:		14/12/2021

**ORDER**

**Per S. S. Godara, J.M.**

This Revenue's appeal for the A.Y 2011-12 against the order of the CIT (A)-1, Hyderabad in Appeal No.10534/CIT(A)-1/Hyd/2018-19, dated 23.10.2019 in proceedings u/s 143(3) r.w.s 147 of the Income Tax Act 1961; in short the Act.

Heard both the parties. Case file perused.

2. The Revenue's sole substantive ground raised in the instant appeal challenges correctness of the CIT (A)'s action restricting the Assessing Officer's action disallowing the assessee's 25% of aggregate purchases involving M/s. Highland Industries Ltd of Rs.57,69,36,164/-, coming to Rs.14,42,34,041/- to the extent of net profits declared in the books of account of Rs.11,54,448/- only. The CIT (A)'s lower appellate discussion to this fact reads as under:

*“6.1 During the assessment proceedings, the Assessment Officer stated*

*9. During the course of assessment proceedings the assessee was asked to produce the Books of account along with all the bills and vouchers, Ledger copies of Nimbus Industries Ltd and Highland Industries Ltd, way bills, delivery challans, Contract agreements, details of transport etc. to prove the genuineness of the transactions held among these companies.*

*10. In response the A.R. of the assessee stated vide its letter submission that all the orders received and placed in respect of sale and purchase transactions are oral. Hence could not produce any documentary evidences for the said orders.*

*11. The A.R. of the assessee was also requested to produce the ledger extracts of the assessee in the books of M/s Nimbus Industries Ltd and Highland Industries Ltd. In response, the AR. of the assessee replied that there are no dues to/ from the above parties as on 31.03.2011 and also after the F. Y. 2010-11 no transactions were entered with them and so they are not in contact with them hence, expressed his inability to produce the same.*

*12. Further, the assessee's argument that the assessee has made payment through banks should be considered as genuine does not find favour since transactions through bank merely indicate the party in whose account the cheque is cleared but it cannot convert the bogus transactions as genuine, therefore, the assessee's argument that the assessee has made payment through bank would not materially alter the stand on purchases more particularly since the direct and circumstantial evidence clearly indicate that the purchases were not genuine. Therefore, the duty is cast on the assessee to prove his claim made in the return of income. The assessee's claim of purchase is merely supported by bank statements cannot circumvent the assessee's responsibility to prove his claim. It cannot be said that the assessee has provided his claim by filing the bank statements more so when such claim having been denied by the party since the assessee has not produced the party for verification and moreover the notices u/ s.133(6) were returned unserved.*

*13. Further, on verification of bank statement, it is observed that the funds received from M/s. Nimbus Industries and transferring identical amounts to M/s. Highland Industries. The aforesaid transactions revealed that M/s. Nimbus Industries received funds from the assessee only. The assessee has not made any purchases from the parties but has used the entities for making layers and ultimate beneficiary is assessee company. Though the assessee denied of having taken any benefit from the aforesaid party,*

however, the information from bank statements revealed and the non-attendance of entities cannot be ignored.

14. Assessee had not supported his claim with any extra evidence or parties for verification. In the interest of natural justice, assessee has given a chance to produce these parties and submit the details viz, delivery challans, details of transport, vehicle numbers used for transporting the goods etc., vide order sheet entry dated 24.12.2018. On the appointed date, assessee failed to produce these parties. He was again requested to give if there is any change of address of these parties and to produce these parties along with the books of accounts, complete bank statement along with necessary bills/ vouchers, delivery challans etc. to prove the identity, genuineness and creditworthiness of these parties. On the appointed date the assessee has failed to produce the parties for verification nor furnished any of the details as called for. It has simply submitted that the company has taken oral orders with his suppliers and the supplier has directly deliver the goods at the customers place is not acceptable since for the oral orders also, there has to be some agreements or any other paper correspondence, for such a big transaction. It is evident from the above status that the assessee who is running the show, which conclusively proved beyond doubt that it has not provided/ sold anything in real world. Purchases which are claimed to have been made are nothing but mere accommodation entries. The fact regarding the parties involved are bogus is getting strengthened by the findings of Investigation Wing and bank statements. Assessee has failed to produce the parties without ascribing any reason for its inability to produce their genuineness, creditworthiness and identity. Had these parties were genuine and had conducted real transaction, they would have appeared/produced by assessee in all human probabilities, but assessee choose not to. Further, on verification of bills and vouchers also, there is no complete information. Hence, assessee's claim of their genuineness does not hold ground. Hence, status of genuineness of the transactions and identity and creditworthiness does not accord with human probabilities. The point of human probabilities have been elaborately discussed by hon'ble Supreme Court in the case of Commissioner of Income-Tax Vs. Durga Prasad More (1971) 82 ITR 540 wherein it has been held that .

15. Since there was no compliance to the notices issued u/ s 133(6) to the said parties, the quantum of sales, ledger account of the sale party, copies of bills raised, mode of payment received, outstanding amount and copy of Income tax return filed and details of mode of transport were not available to verify the Identity and genuineness of the said parties were remained unproved. The assessee's representative has explained the nature of purchases made from each of these parties but the evidences as aforesaid of these parties are not produced during the assessment

proceedings. The onus is on the assessee to prove the identity, creditworthiness and genuineness of the purchase parties to substantiate its claim made towards purchases. The assessee failed to discharge its duty though even after giving sufficient opportunities and reasonable time. Hence, in the absence of any explanation from the assessee and as there was no compliance to notices issued u/ s 133(6) to the said parties, it is clear that the purchases from the above parties are bogus purchase. This view is also supported by the following decisions:

- (i) *N avkar Enterprises vs A CIT (ITA No. 4 722/ Mu m/ 20 1 7)*
- (ii) *N K Industries vs DCIT (Appeal No. 240 of 2C '13).*

(iii) *The above High Court decision is sustained by Hon'ble Apex Court in the case of M/ s. Vijay Proteins Ltd. vs CIT*

Respectfully following the judicial pronouncements, since the assessee has not produced any documentary evidences for the transactions held between assessee company and Highland Industries Ltd and has not produced the parties for verification, it is proposed to disallow 25% of the purchases which works out to Rs.14,42,34,041/-. The same is now added back to the income returned.

6.2 The appellant has submitted as under:

2.2.1. The ITO disallowed a sum of Rs.14,42,34,041/, @ 25% of the purchases, on the ground that the Appellant failed to prove the genuineness of such purchases. In this regard, this is to submit that in response to a specific query in this regard, raised during the reassessment proceedings, it was submitted that the Appellant purchased 17,134.30 MT of steel (TMT Bars) from Highland Industries Ltd and sold the said quantity of steel to Nimbus Industries Ltd on a back-to-back basis. It was explained that both the purchases and corresponding sales were duly reflected in the books of accounts of the Appellant. In fact, the officer himself admitted in para 2 of the order that the Appellant had accounted for purchase of steel from High Land Industries Ltd worth Rs.57,39,36, 164/ and sale of such steel to Nimbus Industries Ltd for Rs.57,80,90, 162/. All the relevant receipts and payments were through banking channels. Copies of the quantitative sales and purchase registers, relevant invoices, ledger accounts of purchases, sales, Highland Industries Ltd, Nimbus Industries Ltd, relevant bank statements and company master data relating to the above companies obtained from the web-site of ROC (to substantiate the fact that both the entities are existing and genuine) were submitted before the ITO, Ward-1(2) Hyderabad during the reassessment proceedings. Copies of the same are submitted as Annexure-4. When asked to furnish the copies of the agreements and delivery challans or other transport related documents, it was explained that the sale orders were received orally through telephone and to meet such orders

*purchase orders were placed telephonically and the material was delivered by the supplier directly at the premises of the buyer and, as such, the transport documents would not be available with the Appellant. However, it was clarified that such orders were backed up by proper invoices thereby culminating the oral transactions into written contracts. The copies of the invoices were already submitted before the ITO, Ward-1(2) Hyderabad. This is a regular practice in this line of business. Thus, all the relevant documents were furnished during the reassessment proceedings and, as such, the observation at para 10 of the order, that the Appellant could not produce any documentary evidence, is contrary to facts. When asked to produce the copies of the ledger accounts of the Appellant in the books of the respective companies or the parties in person, it was explained that the Appellant had no transactions with the latter for the last 8 years and, as such, it would not be possible to obtain in the available time. The ITO himself observed in para 13 of the order that as per the bank account of the Appellant the funds were received from Nimbus Industries Ltd and were transferred to High Land Industries Ltd. However, he made a strange observation that such flow of funds reveals that Nimbus Industries Ltd received amounts from the Appellant only and the Appellant is the actual beneficiary. It is absolutely incomprehensible as to how the officer arrived at such inference which is contradictory to his own admission that the funds received from Nimbus Industries Ltd were transferred to High Land Industries Ltd. Further, as the sales were made to Nimbus Industries Ltd, amounts were received from such concern and the same were utilized for making payment for purchases made from High Land Industries Ltd and there was nothing unusual or unbelievable in these transactions. The Appellant was a beneficiary only to the extent of profit from these transactions which was already included in the Total income returned. The observation of the ITO that the person, from whom purchases were made, denied the transaction is also factually incorrect and mere return of letter u/ s 133(6) unserved cannot lead to such inference. In fact, as submitted above, the very fact, that the summons issued to Highland Industries Ltd were returned with a comment "Left", substantiates the fact that such company actually existed at the address given earlier and it is quite possible that it might have shifted elsewhere subsequently as the transaction is almost 8 year old. In so far as Nimbus Industries Ltd is concerned, the summons was duly served which clearly proves the existence of such entity and the Appellant cannot be held responsible for non-compliance of such person. He also relied on the decision in the case of Durga Prasad More which is not applicable to the Appellant's case as the facts in that case were distinguishable. It was further observed that the Appellant failed to prove the identity, genuineness and creditworthiness of the concern from whom the purchases were made. He failed to appreciate that such test was applicable in respect of credits but not to the purchases though the initial onus of proving the*

transactions was on the Appellant. In fact, the Appellant had produced the complete details and primary evidences in support of purchase and sale of the product in question and thereby duly discharged the primary onus rested on it and thereafter the onus shifted to the ITO to disprove the Appellant's claim. It is a settled principle of law that once the primary onus has been discharged by an assessee, by filing necessary explanation/ evidence, the assessing officer is expected to consider the same and form an opinion as to whether the said explanation/ evidence is satisfactory or not. Such consideration should be guided by sound principles of law and the opinion must be reasonable based on cogent material and shall not be perverse. The departmental authorities are not permitted, by merely rejecting the explanation or/and evidence unreasonably, to convert a good proof into no proof. Thus, the Assessing Officer cannot reject the explanation/ evidences so filed as non-genuine, merely because he continues to entertain suspicion as to the genuineness of the transactions. On the other hand, the burden of proving that the apparent is not real shifts to the assessing officer, and if he wishes to charge the said amount to tax, he is legally bound to make further enquiries and investigation and prove, as a result of such inquiry, that the transaction in question is not genuine. Thus, non-genuineness of a transaction cannot be lightly inferred by the assessing officer and his findings should be based on cogent reasons, supported by positive facts/evidences but not by mere negative inferences driven by suspicion, assumptions, conjectures and surmises. However, no such enquiry was conducted in the case of the Appellant by the ITO and the addition was solely based on suspicion, presumptions and conjectures. Thus, the summary rejection of the evidences filed by the Appellant, without spelling out the reasons based on cogent material, is legally unsustainable and as such the impugned disallowance deserves to be deleted. Reliance is placed on the decision of the jurisdictional High Court in the case of CIT Vs Rajiv Kumar Mittal in ITTA No.407 of 2014 (AP HC). The relevant portion of the decision is extracted hereunder for the perusal of CIT(A):

*"The issue was whether the transaction took place between the assessee and third party was genuine. The laws consistently say that initial burden to establish genuineness of the transaction lies on the assessee first. If the assessee discharges his/its onus, then the burden shifts to the Revenue to produce cogent material disproving the evidence adduced by the assessee. The learned Tribunal has taken note of the judgments on the issue, including an unreported one of High Court of Jharkhand, in Arun Kumar Agarwal (HUF) & Others, dt.13.7.2012 in Tax Appeal No.4 of 2011, and also of Madras High Court in the case of C.I.T. v. Gobi Textiles Ltd. [I] wherein it has been stated the legal position as quoted by us above.*

*Here, on fact, the learned Tribunal found the assessee has discharged initial burden lies on it. We, therefore, do not find any element of law to interfere with the impugned judgment and order of the learned Tribunal.*

*The appeal is accordingly dismissed. There will be no order as to costs."*

*A copy of the decision is submitted as Annexure-5. Thus, the summary rejection of the evidences filed by the Appellant, without spelling out the reasons based on cogent material, is legally unsustainable and as such the addition deserves to be deleted.*

*Without prejudice to the above, it is humbly submitted that in the case of trading activities, every purchase made during any year would form part of either sale or dosing stock of that year. It is a settled principle that where sales are not disputed or doubted, the corresponding purchases cannot be disallowed, as no sales can be affected without purchases. Similarly, no disallowance is called for when the purchases are reflected as closing stock, since there cannot be any closing stock without corresponding purchases. Reliance is placed on the following decisions:*

*CIT Vs Leaders Valves P Ltd 285 ITR 435 (P & H);  
CIT Vs Kashiram Textile Mills P. Ltd. 284ITR 61 (Guj)  
CIT Vs Nangalia Fabrics P Ltd (Tax Appeal No. 689 of 2010)  
(Guj HC)*

*The Hyderabad Bench of Hon'ble ITAT held, vide its order in ITA No 2016 of 2017 dt.22.0S.2018 in the case of Meena Jewellers P Ltd, that there cannot be any disallowance of the purchases if it is found that the respective payments have been made by the assessee through banking channels and the purchases and sales have also been recorded in the books and the net profit has been offered to tax. Further, the Hon'ble High Court of Bombay held, vide its order in ITA No 1004/2016 dt.11.02.2019 in the case of Pr. CIT Vs Mohommad Haji Adam & Co, that the purchases cannot be rejected where the corresponding sales have not been disputed by the department. It further approved the decision of ITAT to restrict the addition in such cases to the extent of normal GP on its other purchases. Copies of the above decisions are submitted as Annexure-6.*

*In the instant case, quantitative sales and purchase registers and relevant invoices were submitted during the reassessment proceedings and it was amply evident from such documents that all the products purchased during the year were sold and the resultant profit was duly accounted for. The respective payments were made through banking channels and no evidence, to the effect that the Appellant Company received back such amounts, was found / gathered either by the investigation wing or by the ITO.*

*Further, he had accepted the sales affected by the Appellant which would not have been possible without purchase of corresponding quantity of steel and, as such, the impugned disallowance of a portion of purchases was legally unsustainable.*

*In view of the above factual and judicial position, no disallowance is warranted on account of unverifiable purchases.*

*The ITO further failed to appreciate that the rate of profit in steel trading, especially on a back-to-back basis, would not be more than what had already been declared by the Appellant in its accounts. Thus, disallowance of 25 % of the purchases, without giving any basis, was highly arbitrary and irrational.*

*In view of the above submissions, the CIT (A) is prayed to delete the disallowance of Rs.14,42,34,041/-*

*7. I have carefully considered the facts of the case, assessment order and the written submissions of the appellant along with case laws. As per the assessment order, there is information from the Wing that the appellant company, M/s. AMR Global Industries Ltd had received certain amount from M/ s. Nimbus Industries and transfer the same to M/ s. Highland Industries. It was also found that the appellant has booked purchases of TMT steel bars from M/ s. Highland Industries Ltd. and sale of the same to M/ s. Nimbus Industries Ltd. and therefore, directed the assessing officer to verify the purchases. Based on the information, the assessing officer reopened the case and completed the assessment by disallowing 25% of purchases since the appellant has not produced any documentary evidence for transactions made between MI s. Highland Industries Ltd and M/s. Nimbus Industries Ltd. On verification of the details, the appellant already filed its Return of Income in which the purchase and sales were recorded and returned profit. The assessing officer nowhere disputed the purchases made and sale disclosed and also the payments made against purchases and received against sales. There are no debtors and creditors pending at the end of the financial year 2010-11. All the transaction were done through banking channel. Therefore, the action of the assessing officer disallowing certain portion of purchases is not justified. Further the case laws relied upon by the appellant in the case of M/s. Meena Jewellers (P) Ltd.in the case of Meena Jewellers P Ltd the ITAT, Hyderabad has stated that*

*“Having regard to the rival contentions and the material on record, we find that the assessee has made the payments to the parties through banking channels and therefore, the party was rightly identified. Further, the assessee has made the sales of these items and offered the income therefrom to, tax. Once the Department accepts the sale, it cannot disallow*

*the corresponding purchases. When all the documents were on the file of the AO, he ought to have verified the genuineness of the sale instead of depending solely on the statement of the Rajendra Jain Group. In view of the same, we deem it fit and proper to remit the issue to the file of the AO for verification of the documents filed by the assessee and if it is found that the payment has been made by the assessee through banking channels and the purchases and sales have also been recorded in the books and the net profit has been offered to tax, then there cannot be any disallowance of the purchases”.*

*Further the ITAT, Mumbai in the case of Cannon Industries (P) Ltd Vs. DCIT (2015) (59 taxmann.com 65), stated that*

*AO has not disputed the sales of the assessee and has also not disputed the quantitative figures regarding opening stock, purchases and closing stock as well as sales. Therefore, when there is no dispute or discrepancy in the quantitative figures of purchase, stock, sales including closing stock, then the purchases can not be treated as bogus.*

*7.1 The appellant also accepted that the steel trading was back-to-back basis transaction. When there is back to back transaction, difference between sales and purchases is to be treated as profit. Therefore, the difference between Rs.57,80,90,612/- (-) Rs.57,69,36,164/- Le., Rs. 11,54,448/- is confirmed as profit and balance deleted”.*

3. Learned CIT-DR vehemently contended during the course of hearing that the Assessing Officer had clearly indicated specific set of facts that the assessee’s alleged supplier M/s. Highland Industries Ltd was a bogus entity providing mere accommodation entries as per the ADIT (Inv.) New Delhi’s report. And that the assessee’s purchases @ 25% of the total amount had been rightly disallowed in the course of assessment which deserves to be revived in the instant second appeal proceedings.

4. Learned AR has placed strong reliance on the CIT (A)’s detailed discussion deciding the issue in assessee’s favour.

5. We have given our thoughtful consideration to rival pleadings and find no merit in Revenue’s stand. There is hardly

any dispute that although the learned lower authorities have allowed 75% of the very purchases in the assessment order itself since we are dealing with the remaining estimated disallowance of 25% only, the fact remains that this assessee is a trader in TMT Bars with corresponding sales involving M/s. Nimbus Industries Ltd qua the very purchase(s) difference. It had the difference amount admitted as business income and stood assessed as such. Coupled with this, this assessee has filed detailed paper book containing all the relevant details of the alleged bogus entity M/s. Highland Industries Ltd along with the fact that it had paid the corresponding purchase amount through banking channel only. The Revenue's endeavor herein seeking to restore 25% of purchases on estimation basis thereby accepting the balance 75% component in case to the very supplier as well as in assessing 100% sales therefrom as correct suffers from mutually contradictory stands. We thus conclude that the CIT (A) has rightly restricted the impugned 25% bogus purchases disallowed to the extent of profit element only going by the corresponding book results which have nowhere been rejected till date. The Revenue's sole substantive grievance is therefore rejected.

6. This Revenue's appeal is dismissed.

Order pronounced in the Open Court on 14<sup>th</sup> December, 2021.

<b>Sd/-</b> <b>(A.M. ALANKAMONY)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(S.S. GODARA)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 14<sup>th</sup> December, 2021.

*Vinodan/sps*

Copy to:

S.No	Addresses
1	Income Tax Officer Ward 1(1) Room No.837, 8 <sup>th</sup> Floor, C Block, IT Towers, AC Guards, Masab Tank, Hyderabad
2	AMR Global Industries Ltd, Plot No.37 & 38 Phase-I, Kamalapuri Colony, Ameerpet, Hyderabad 500038
3	CIT (A)-1, Hyderabad
4	Pr. CIT – 1, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*