

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'SMC': NEW DELHI**

(Through Video Conferencing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

**ITA No.4611/DEL/2019
[Assessment Year: 2010-11]**

S.R. Metal Co. 4977, Mandi Rui, Sadar Bazar, Delhi-110006	Income Tax Officer, Room No.2102, 21 st Floor, Pratyakshkar Bhavan, B-Block Civic Centre, J.L. Nehru Marg, New Delhi-110002
PAN-AAQFS9473H	
Assessee	Revenue

Assessee by	Sh. Naveen Kumar Garg, CA
Revenue by	Sh. Om Prakash, Sr. DR

Date of Hearing	29.11.2021
Date of Pronouncement	23.12.2021

ORDER

This appeal filed by the assessee is directed against the order dated 19.03.2019 of the learned CIT(A)-38, New Delhi, relating to Assessment Year 2010-11.

2. Facts of the case, in brief, are that the assessee is a partnership firm, engaged in the business of trading of ferrous and non ferrous metal items. It filed the original return of income on 26.08.2010 declaring NIL income, which was processed u/s 143(1) of the Act. Subsequently, information

was received that the assessee has received bogus accommodation entry of Rs.94,12,375/- from M/s Vishnu Trading and M/s Shree Shyam Traders. After receiving the above information, the Assessing Officer went through the record and noted that no assessment was completed u/s 143(3) of the Act and therefore, the genuineness of the accommodation entries could not be verified/examined earlier. He, therefore, after recording the reasons and after obtaining the prior approval from the PCIT, reopened the assessment and issued notice u/s 148 of the Act. However, the notice so issued was returned back with postal remark "no firm with this name exists, hence returned". Subsequently, notice u/s 148 dated 06.03.2017 was served by hand to the assessee on 16.03.2017, which was acknowledged by the assessee.

2.1. During the course of assessment proceedings, the Assessing Officer examined the details of accommodation entries provided by Sh. Rakesh Gupta & Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain in the form of bogus purchases. On examining the list of accommodation entries provided by Sh. Rakesh Gupta & Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain pertaining to A.Y. 2010-11,

he noted that the following entries have been taken by the assessee

<i>Sl. No.</i>	<i>Name of Entry provider</i>	<i>Name of the party to whom accommodation entry is provided</i>	<i>Amount</i>
1	<i>M/s Vishnu Tading Co. 5196, Sadar Thana Road, Delhi-6,</i>	<i>M/s SR Metal Co 4977, Rui Mandi, Sadar Bazar, Delhi-6</i>	<i>Rs.35,59,715/-</i>
2	<i>M/s Shree Shyam Traders 3838, Gali Barna, Near Masjid Shahgul, Sadar Bazar, Delhi-6</i>	<i>M/s SR Metal Co. 4977, Rui Mandi, Sadar Bazar, Delhi-6</i>	<i>Rs.35,59,715/-</i>
		<i>Total</i>	<i>Rs.94,12,375/-</i>

2.2. He noted that Sh. Rakesh Gupta & Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain during the course of assessment proceedings u/ s 153A of the IT Act have admitted on oath that they have provided accommodation entries to parties whose lists have been provided by them to the ACIT, Cental-10, New Delhi. He therefore concluded that SR Metal Co. has taken accommodation entries from Sh. Rakesh Gupta & Vishesh Gupta and Sh. Navneet Jain & Sh. Vaibhav Jain pertaining to AY 2010-11.

2.3. He noted that the case for Assessment Year 2009-10 was taken up for re-assessment proceedings u/ s 147/148 and the facts of the case were similar to the facts as recorded for the

year under consideration. He observed that during the assessment proceedings for AY 2009-10 the assessee firm vide note sheet entry dated 26/09/2016 had agreed to pay tax @ 12.5% on the total purchases from the parties. He therefore asked the assessee to justify the bogus accommodation entries taken and also show cause as to why addition @ 12.5% of the gross amount of accommodation entry should not be made. The assessee vide reply dated 12.12.2017 stated that the addition should not be made and also accepted addition @ 2% of such bogus purchases by relying upon the decision of the Tribunal in case of M/s Steel Line (India) Vide ITA No.1321-1323/Mum/2016 dated 29.08.2017.

2.4. However, the Assessing Officer was not satisfied with the arguments made by the assessee. He concluded that an amount of Rs 94,12,375/- was the bogus accommodation entry provided by M/s Vishnu Trading Co and M/s Shree Shyam Traders for Rs 35,59,715/- & Rs58,52,660/- respectively. Since the assessee had not declared any profit in his books of account, therefore, he made addition of Rs.11,76,547/- being 12.50% as the profit on such bogus purchases.

3. Before the Ld. CIT(A), the assessee filed detailed submission based on which the Ld. CIT(A) called for a remand report from the Assessing Officer. After considering the remand report of the Assessing Officer and the rejection of the assessee to such remand report, the Ld. CIT(A) rejected the various additional evidences filed before her and upheld the action of the Assessing Officer by observing as under:-

“4.3.15 In the present case, as discussed above, there is overwhelming evidence that the transaction on which adverse view has been taken was a pre-arranged transaction under taken with the sole motive to evade tax. All these above-mentioned cases are also applicable to the facts and circumstances of the present case in which the various judicial authorities have decided the cases in favour of revenue after going through the entirety of the facts and circumstances. Hence, in view of the facts and circumstances of the case and legal precedents as discussed above, I am of the view that documents submitted as evidences to prove the genuineness of the transactions are themselves found to serve as smoke screen to cover up the true nature of the transactions. Accordingly, in view of the above discussion and judicial precedents, it is held that AO was justified in making addition of as income of tire assessee from bogus purchases under section 69C. Accordingly, entire bogus purchases amounting to Rs. 94,12,375/- is confirmed. Grounds of appeal nos. 1, 2 and 3 are dismissed.”

4. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

1. *That on the facts and in the circumstances of the case and in Law, the Hon. CIT (Appeals) grossly erred in enhancing the income of appellant Assessee by sum of Rs.9412375/- acting ultra vires to statutory limitation of enhancement powers u/s 251 which is ab initio void and fundamentally flawed action.*

2. *That on the facts and in the circumstances of the case and in Law, the Hon. CIT (Appeals) grossly erred in confirming the Assessing officer's contention of considering the genuine purchase of Rs. 9412375/-, as Bogus Purchase merely on his suspicion and surmises, without any corroborative evidence and cogent reasons brought on record by Assessing officer.*

3. *That on the facts and in the circumstances of the case and in Law, the Hon. CIT (Appeals) grossly erred in confirming the contention of the Learned Assessing officer who considered the purchase of Rs.9412375/- as bogus, merely on the basis of the preceding Assessment year 2009-10 where the Assessee agreed to addition of 12% of purchase as income.*

The Learned Assessing Officer failed in appreciating that each year is an independent Year and addition can be made on the basis of independent finding only for the Year under Consideration.

4. *That on the facts and in the circumstances of the case and in Law, the Hon. CIT (Appeals) grossly erred in enhancing the additions of Rs. 1176547/- (12% of alleged bogus purchase) made by assessing officer, to Rs.9412375/- under sec.69C.*

The Honourable CIT (Appeals) passed a Non speaking order without considering the reply and evidences filed by the Assessee, against the show cause Notice issued by him.

5. That on the facts and in the circumstances of the case and in Law, the Hon. CIT (Appeals) grossly erred, by rejecting the evidences and details filed with Assessing officer and also with him, on wrongly considering the same as additional evidences.

The Assessee did not file any additional evidence with Honourable CIT (Appeals). The documents and evidences as per Paper Book filed with him were all available, and filed with assessing officer during Assessment proceedings.

6. That on the facts and in the circumstances of the case and in Law, the Honourable CIT(A) has grossly erred while not disposing of the grievance of Assessee regarding disputed addition of Rs. 1176547/- as income computed @12% of the alleged bogus purchase of 9412375/-.

Grounds of Appeal, not prayed Before the CIT (A):

7. That on the facts and in the circumstances of the case and in Law, the Learned Assessing officer grossly erred while issuing an invalid notice under Sec. 148 of the Act, 1961, on wrongful application of mind and without forming an independent view on the basis of the material available before him.

8. That on the facts and in the circumstances of the case and in Law, the Learned Assessing officer grossly erred in not providing the statement and Annexures of the Seller/entry provider, and which were relied on by him for reopening of Assessment.

The Learned Assessing Officer has thus gone against the principal of natural justice and therefore, the corresponding additions made is null and void.”

5. The Id. Counsel for the assessee referring to page-27 of the paper book submitted that the details of purchases had been given to the Assessing Officer. Had the Assessing Officer gone through the details, he would not have made the addition. Referring to various pages of the paper book, he submitted that both the Assessing Officer and the Id. CIT(A), have not properly appreciated the facts. Further, the Id. CIT(A) did not consider the paper book filed before her and passed a non-speaking order on the issue before her. He submitted that given an opportunity, the assessee is in a position to substantiate the genuineness of the purchases.

6. The Ld. DR on the other hand, while supporting the order of the Ld. CIT(A) submitted that the issue may be set-aside to the file of the Id. CIT(A) but not to the Assessing Officer.

7. I have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the assessee. I find the AO in the instant case made addition of Rs.11,76,547/- being profit @ 12.5% on the bogus purchases of Rs.94,12,375/- which were provided as accommodation entries

by M/s Vishnu Trading Co. and M/s Shree Shyam Traders for Rs.35,59,715/- & Rs.58,52,660/- respectively. I find the ld. CIT(A) upheld the addition made by the Assessing Officer on the ground that the various evidences produced before her to prove the genuineness of the transaction are themselves found to serve as smoke screen to cover up the true nature of the transactions. It is the submission of the ld. Counsel for the assessee that various evidences filed before the Ld. CIT(A) were not at all considered by her and she has passed a non-speaking order. I find from the order of the Ld. CIT(A) that she has not also admitted the additional evidences filed before her on the ground that the assessee has given no reason as to why he could not produce these evidences before the Assessing Officer. Although, it is a fact that the assessee did not file the requisite details before the Assessing Officer for which he has passed the order u/s 144/147 of the Act, however, if the additional evidences go to the root of the matter then in the interest of justice, the Ld. CIT(A) should have admitted the same. It is the submission of the ld. Counsel for the assessee that given an opportunity, the assessee is in a position to substantiate the genuineness of the purchases. Since, the various details

furnished before the lower authorities were not considered by them, therefore, considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore this issue to the file of the Ld. CIT(A) with a direction to grant one final opportunity to the assessee to substantiate its case and decide the issue as per fact and law. The assessee is also hereby directed to cooperate in early finalization of the appeal without seeking any adjournment under any pretext, failing which the Ld. CIT(A) is at liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are allowed for statistical purpose.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 23rd December, 2021.

Sd/-
[R.K.PANDA]
ACCOUNTANT MEMBER

Delhi; Dated: 23/12/2021

Shekhar,

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi