

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC-2” BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 3599/DEL/2019

[Assessment Year: 2010-11]

KanwarSain Gupta, D-12, Nehru Ground,NIT, Faridabad-121001 PAN- ACJPG5867C	<u>Vs</u>	Income Tax Officer, Ward-I(4), Faridabad.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Sh. Om Prakash, Sr. DR	
Date of hearing	10.01.2022	
Date of pronouncement	18.01.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), Faridabad, dated 30.03.2019, pertaining to the assessment year 2010-11. The assessee has raised following grounds of appeal:

- “1) *That on the facts and in the circumstances of the case and in law the Ld. CIT(Appeal) erred in confirming the addition of Rs. 25,45,960/- made by the Ld. AO to the income of the appellant on account of embedded profit element @ 5% and Ld. CIT(AO enhanced the same profit by Rs. 49,73,955/- and the total possible profit element has been*

arrived at the rate of 14.77% on embedded purchases of Rs. 5.09 crores made through alleged non-genuine parties on the basis of information of DGIT (Investigation) about suspicious dealers and rejected the accounts u/s 145(3).

- 2) *That the Ld. CIT(A) as well as Assessing Officer has referred the investigation Report of the Department but material thereof never provided to the assessee even before completing assessment as well as appellate proceedings so that assessee could furnish his defence. In absence of the material used by the Assessing Officer being not provided to the assessee, the assessment proceedings become bad in law.*
- 3) *That there was no justification of the Ld. CIT(A) by enhancing and making addition of Rs. 49,73,955/- and confirming the addition of Rs. 25,45,960/- made by the AO as such gross profit was declared by the assessee at Rs. 18,22,572/- hence the overall GP on GTO comes to Rs. 93,42,490/- and gross profit ratio comes to Rs. 6.75% against declared GP ratio of 1.32% by appellant during the year under consideration*
- 4) *That the history of the case is the best gross profit rate of 1.57% has been accepted by the department from assessment year 2007-08 to 2012-13 in the case of the assessee. The facts and circumstances of the case, the nature of business is same in the year under consideration and is identical to assessment year 2010-11. The Ld. CIT(A) has applied profit @ 14.77% on the embedded purchases of Rs. 5.09 crores during the year under consideration which is not justified at all. Thus there was absolutely no justification for making any addition in the same set of circumstances. Considering these facts which constitute the history of the case no addition is called for in the year under consideration.*
- 5) *That the assessee had filed all the necessary documentary evidences in the possession of the assessee to prove the genuineness of the transactions and the assessee does not have sweeping powers to force a third party to either give confirmation or other documentary evidences asked by the AO, which of course the AO does have in terms of issuing summons etc. That the inquiry was made at the much later stage and by that time these parties have discontinued their business.*

- 6) *That the Ld. CIOT(A) issued show cause notice dt.07.03.2019 and proposed addition @ 12.50% on alleged bogus purchases of Rs. 5.09 crores and proposed enhancement of Rs. 38,18,945/- lacs on income of appellant which was enhanced to Rs. 49,73,955/- lacs @ 14.77% in the order passed u/s 251(1) of the Act is not justified at all.*
- 7) *That in the year under consideration the gross profit ratio was 1.32% and net profit ratio was 0.57% of total turnover while the Ld. CIT(A) computed profit at 14.77% which is impossible and computing of profit of 14.77% was fairly uncalled for having regard to the past history of the case and in absence of any similar comparable cases having such profit. As per the facts of our case, we give below the comparative chart for the last six years so far as the profit earned by the appellant is concerned. The assessee deals in all types of ferrous and non-ferrous metals of scrap, the purchases made included iron dust, rusted, junked and obsolete material etc. which has very low residue value.*

	F.Year	A.Year	GTO	Gross Profit	G. Profit Ratio	Net Profit	N. Profit Ratio	Remarks
a)	2006-07	2007-08	Rs.5,99,93,560/-	Rs. 9,41,007/-	1.57%	Rs. 446823/-	0.74%	Assessed u/s 143(3)
b)	2007-08	2008-09	" 61478665/-	9,46,402	1.54%	418680/-	0.68%	-
c)	2008-09	2009-10	59579538	9,21,678/-	1.55%	436308	0.73%	-
d)	2009-10	2010-11	138488316	18,22,572/-	1.32%	788608/-	0.57%	-
e)	2010-11	2011-12	171742870/-	22,94,186/-	1.34%	819119/-	0.48%	Assessed u/s 143(3)
f)	2011-12	2012-13	186627245	2559,952	1.37%	837491	0.45%	-

- 8) *The appellant craves to leave to add, modify, amend or delete any of the grounds of the appeal at the time of hearing and all the above grounds are without prejudice to each other.*

2. At the time of hearing no one appeared on behalf of the assessee. It is seen from the record that neither the assessee nor his representative is appearing despite various opportunities having been given. Notices sent through speed post with acknowledgement due are returned unserved by the postal authorities. The assessee

has not provided any fresh address to the Registry. Therefore, the appeal was taken up for hearing in the absence of the assessee.

3. The only effective ground is against further enhancing the addition of Rs. 49,73,955/- by applying the rate at 14.75% on the embedded purchases of Rs. 5.09 crores. Facts, in brief, are that in this case return of income was filed by the assessee on 30.07.2010. Subsequently, it came to the notice of the Revenue that the assessee had taken accommodation entries of Rs. 1,08,13,985/- through accommodation entries provider M/s Jai Shiv Enterprises; of Rs. 42,27,433/- through accommodation entries provider M/s Jagdamba Enterprises; and of Rs. 1,28,51,115/- through accommodation entries provider Sh. Hemant Kumar Prop. M/s Krishna Industries during financial year 2009-10 relevant to the assessment year 2010-11. Therefore, the assessment was reopened and a notice u/s 148 of the Income-tax Act, 1961, hereinafter referred to as the "Act" was issued to the assessee. In response to the said notice, the assessee filed letter dated 6.4.2015 and stated that return of income filed on 23.7.2010 may also be treated as return filed in response to the notice u/s 148 of the Act. The Authorized Representative of the assessee attended the proceedings and filed details as called for. The Assessing Officer after considering the submissions and the material placed before him treated the purchases of Rs. 5,09,19,244/- as bogus purchases and applied net profit rate of 5% on the turnover of Rs. 5,09,19,244/-, which comes out to be of Rs.

25,45,962/-. Hence the Assessing Officer made addition of Rs. 25,45,960/- and assessed the income at Rs. 33,35,670/- as against the income declared at Rs. 7,89,710/-.

4. Aggrieved against the order of Assessing Officer the assessee preferred appeal before the learned CIT(Appeals), who, after considering the submissions further enhanced the addition at Rs. 49,73,955/- and dismissed the ground of appeal.

5. Aggrieved, against the order of ld. CIT(Appeals), the assessee has preferred appeal before this Tribunal. The contention of the assessee as culled out from the record is that the learned CIT(A) issued show cause notice dated 7.3.2019 and proposed addition of 12.50% on alleged bogus purchases of Rs. 5.09 crores and proposed enhancement of Rs. 38,18,945/- on income of the appellant which was enhanced to Rs. 49,73,955/- which comes out to 14.77%. It is contended that in the year under consideration the gross profit rate was 1.342% and net rate is 0.57% of total turnover, while the learned CIT(A) computed at 14.77% which is impossible and computing of profit of 14.77% was uncalled for having regard to the past history of the case and in the absence of any similar comparable cases having such profit.

6. The learned Sr. DR opposed the submissions and supported the orders of the authorities below.

7. I have heard learned DR, perused the material on record and gone through the orders of authorities below. I find that the assessee has not filed any evidence regarding genuineness of the purchases. The authorities below have not added the entire purchases as unexplained investment but made addition on the basis of the embedded profit. Learned CIT(A) has applied the rate at 14.77%. However, considering the case laws as relied by the assessee, in the interest of substantial justice, the AO is directed to adopt the rate of 7.5% and recomputed the addition. The ground raised by the assessee is partly allowed in the terms indicated above.

8. Assessee's appeal is partly allowed.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Madan Pal Verma

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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