

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI **ANIL CHATURVEDI, ACCOUNTANT MEMBER**  
AND  
SHRI **N. K. CHOUDHRY, JUDICIAL MEMBER**

ITA No. 1086/Del/2019  
(Assessment Year: 2015-16)

Rajender Kumar Chaudhary C/O Mr. SandeepSapra, Adv, C-763, New Friends Colony, New Delhi-110025 PAN: <b>ADEPC3885G</b>	Vs. DCIT, Circle-62(1), New Delhi.
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**(Appellant)**

**(Respondent)**

Assessee by:  
Revenue by :

ShriSandeepSapra, Adv.  
Shri Kumar Pranav, Sr.  
DR

Date of hearing	15/03/2022
Date of pronouncement	29/03/2022

ORDER

PER N.K. CHOUDHRY, J. M.:

The Assessee has preferred the instant appeal against the order dated 20.12.2018 impugned herein passed by the Id. Commissioner of Income tax (Appeals)-20, New Delhi (in short "Ld. Commissioner") u/s 250 of the Income Tax Act, 1961 (in short "the Act"), whereby the learned Commissioner has affirmed the disallowance of Rs. 35,42,719/- out of purchase expenses claimed by the Assessee.

2. In this case return of income was filed by the Assessee on 30.09.2015 by declaring total income at Rs. 1,10,30,830/- which was processed u/s 143(1) of the Act. Subsequently the case of the Assessee was reopened for limited scrutiny for the following heads:

- i. Large squared up loans during the year (form 3CD)
- ii. Large other expenses claimed in the Profit & Loss a/c.
- iii. Tax credit claimed (and receipts) in ITR is less than tax credit available in 26AS.
- iv. Mismatch in expenditure of personal nature reported in audit Report and ITR.

3. During the course of assessment proceedings, the assessee was asked to produce bills, vouchers, muster-rolls, wage sheets etc. for verification and on the basis of verification, addition of Rs. 35,42,719/- was made by the Assessing Officer by holding as under:

*"The assessee vide submissions dated 23.11.2017 produced the copies of above stated bills On perusal of the same it was found that some of these bills were still not proper and appears to be recently manufactured. Bill No. 80 dated 31.07.2014 from Naresh Kumar (RMC) amounting to Rs. 2,00,000/-, Bill No. 008 from Ganesh Carrier amounting to Rs. 5,52,895/-, Bill No. 027 dated 31.08.2014 from C.S. Associates amounting to Rs. 8,39,824/- and bill dated 31.12.2014 from C.S. Associates amounting to Rs.*

*19,50,000/- were self-generated and no TIN were mentioned on these bills. Also date of the bill No. 008 from Ganesh Carrier was changed from 21 Dec 2017 to 28 Feb 2015.*

*In the light of the discrepancies mentioned above, Rs. 35,42,719/- debited as expense on account of purchases in respect of the above stated bills is disallowed and added back to the income of the assessee. Penalty proceedings u/s 271(1)(c) of the IT Act 1961 are being initiated separately for furnishing inaccurate particulars of income.”*

4. The Assessee being aggrieved challenged the said addition before the Id. Commissioner, who vide impugned order affirmed the order of the Assessing Officer by holding as under:

*4.2.1 The AO during scrutiny from the verification of the purchase expenses of the appellant found that certain specific bills from certain specific persons made on certain specific dates were missing. Through show cause letter the AO asked the appellant why the amounts in the bill should not be disallowed. The AO in return produced the copies of the above stated bills. On perusal of the same the AO found that some of these bills were still not proper and appeared to have been recently manufactured. The AO pointed out the below mentioned bills which were self generated and no TIN were mentioned on those bills. On one bill there has been a change of date.*

<i>Bill No.</i>	<i>Dated</i>	<i>Name of the Party</i>	<i>Amt.</i>	<i>Nature of Supply</i>
<i>80</i>	<i>31.07.2014</i>	<i>Naresh Kumar (RMC)</i>	<i>2,00,000</i>	<i>Snd</i>

008	28.02.2015	Ganesh Carriers	5,52,895	Sand
027	31.08.2014	CS Associates	8,39,824	Aggregate
037	31.12.2014	CS Associates	19,50,000	Aggregate
		Total	35,42,719	

*The AO then disallowed the amount of Rs. 35,42,719/- found by her not to be actually accounted for and defective and added the amount to the total income of the appellant.*

*4.2.2 The appellant during appeal hearing submitted that the payments have been made through bank accounts. All the bills are proper and not manufactured or self generated. As per law no TIN is required by the suppliers of sand and the AO should not have taken adverse inference if TIN was no mentioned by the suppliers in some bills. In case the AO was having any doubt about the genuineness of the bills she could have again asked the appellant to prove the genuineness of the bill or could have summoned the suppliers or obtain evidence from them u/s 133(6) of the Act. The appellant produced some of the bills before the undersigned for verification.*

*4.2.3 I have perused the assessment order and the submissions of the appellant carefully. The AO had diligently found out discrepancy in the bills of purchase expenses made by the appellant. The AO had also given opportunity to the appellant to explain his case. Still then the AO could find that the specific bills as mentioned above are deficient and not proper. Besides this the appellant, had submitted some of such bills and the ledger copy before the undersigned. It is found that in the ledger bill No. etc. were mentioned and amount has been paid through bank or RTGS but the bills were raised later on papers for the same were made earlier to raising of bills which is evident from the copies of bills. This is quite an odd and unnatural situation that amount to the supplier from whom purchases were made was prepaid mentioning the bill No. whereas the bills carry the dates of a later period. Under the circumstances I am inclined with the finding and decision of the AO in disallowing the amount of Rs. 35,42,719/- from*

*the purchase expenses claimed by the appellant. The action of the AO is confirmed.”*

5. Aggrieved by the impugned order, the Assessee has preferred the instant appeal.

6. We have heard the parties and perused the material available on record. The Assessee before us mainly emphasized that the Assessing Officer had asked for certain details qua purchase expenses, which were provided by the Assessee on 20.11.2017 and thereafter on test check basis some discrepancies were found by the Assessing Officer and the same were conveyed to the Assessee and the Assessee was show caused vide letter dated 20.11.2017 as to why the allowances qua purchase expenses with regard to the missing bills should not be added by disallowing. Though the Assessee in response to the said show cause, vide submissions dated 23.11.2017 produced copies of the bills, however the Assessing Officer without considering the same disallowed the amount of Rs. 35,42,719/- which were debited as expenses on account of purchases in respect of bills submitted by the Assessee before the Assessing Officer. The Assessee claimed that though the Assessee complied with show cause vide its letter dated 23.11.2017, however, thereafter no further queries/objections were raised by the Assessing Officer and without giving any opportunity to the Assessee in respect of discrepancies to the effect that some of the bills were not proper and appears to be

recently manufactured, passed the assessment order dated 29.11.2017 and, therefore, violated the principles of natural justice. The Assessee also submitted that even without prejudice to the above submissions, the disallowance of Rs. 35,42,719/- on merits too is wholly unjustified and illegal. In support of his case the Assessee relied upon various documents submitted before the authorities below.

We observe that though the Assessee submitted the relevant missing bills before the Assessing Officer on 23.11.2017, however, the Assessing Officer failed to consider properly and in hurried manner without affording reasonable opportunity to explain the documents submitted by the Assessee, passed the order on 29.11.2017. Hence, considering the peculiar facts and circumstances, as the Assessee did not get proper opportunity of being heard and/or to explain the queries and documents submitted before the authorities below, hence without going into the merits of the case, we deem it appropriate to remand the case to the file of the Assessing Officer for just decision of the case. Consequently, the case is remanded to the file of the Assessing Officer to re-examine the facts and documents qua addition of Rs. 35,42,719/- only and to pass an order afresh, suffice to say by affording reasonable opportunity of being heard to the Assessee.

7. In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

-Sd/-  
**(ANIL CHATURVEDI)**  
ACCOUNTANT MEMBER

-Sd/-  
**(N.K. CHOUDHRY)**  
JUDICIAL MEMBER

Dated:29/03/2022

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi