

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, KOLKATA**  
[Before Shri A. T. Varkey, JM]**I.T.A. No. 314/Kol/2021**  
Assessment Year: 2012-13

Indian Supercraft Industries (PAN: AAAFI6746F)	Vs	Income-tax Officer, Kolkata	Wd-36(2),
Appellant		Respondent	

Date of Hearing	15.03.2022
Date of Pronouncement	15.03.2022
For the Appellant	Sm. Pinki Shaw, ACA
For the Revenue	Shri Nicholas Murmu, Addl. CIT

**ORDER**

This is an appeal preferred by the assessee against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 27.07.2021 for AY 2012-13.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the action of the AO making an addition on account of Gross Profit @ 5.02% of Rs.1.27 cr.

3. Brief facts of the case are that the AO noted that the assessee is a trader in iron and steel business. The AO reopened the assessment of the assessee on the belief that there is an escapement of income to the tune of Rs.2,69,92,776/-. According to the AO, the assessee had made bogus purchases from seven (7) entities (bogus) controlled by Shri Sanjiw Kumar Singh who had admitted before the directorate of Investigation, Kolkata that he is an accommodation entry provider in lieu of commission. According to AO, investigation report suggests that assessee is also one of the beneficiary. So he reopened the assessment of the assessee. Later on, from the perusal of the assessment order it is discerned that out of the seven (7) entities, the AO has scaled down to five (5) entities the details of which he has given in the form of a chart at page 4 of his order and also brought down the escapement of income amounting from Rs.2.69 cr. to Rs.1.27 cr. When the AO confronted the assessee in respect of the allegation of purchases made by it from five (5) bogus entities, the assessee in order to prove the genuineness of the transaction/purchase with them, filed the following documents viz., Bank statement, VAT returns, ledger of sales, purchase etc. which fact of

filing of these documents have been accepted by the AO at page 4 of his order. However, the AO did not accept the contention of the assessee and after reproducing certain statements of the alleged accommodation entry operator Shri Sanjiw Kumar Singh (from page 5 to 11 of his order) he observed that *“items claimed to have been purchased from the abovementioned fake entities were sold to govt. agency like Indian Railways. Hence, it may be assumed that the assessee might have purchased these raw materials from grey market and took the bills from the fake entities of Shri Sanjiw Kumar Singh to reduce its gross profit which was evident in coming years i.e. during the year under consideration the GP rate was 5.02% for AY 2012-13 but it got increased in the coming years during the subsequent years (AY 2014-15) when it reaches to 10.04%.”* And in the aforesaid backdrop, he was pleased to estimate the income of the assessee by adding back GP rate @ 5.02% of the bogus purchase of Rs.1,27,22,373/- which, according to him, was the income suppressed by the assessee which showing its gross profit. Accordingly, he directed the addition of Rs.6,38,663/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to sustain it. Aggrieved, the assessee is in appeal before this Tribunal.

4. Assailing the action of the Ld. CIT(A), the Ld. AR Smt. Pinki Shaw contended that based on third party information (Shri Sanjiw Kumar Singh's) statement alone the addition/estimation has been made by AO which is erroneous. According to her, the turnover of the assessee is to the tune of Rs.11.38 cr. which figures have not been disturbed by the AO, which means that the sales which the assessee has made has been accepted by the AO. So, according to Ld. AR, the purchase figure cannot be disturbed on the sole basis of 3<sup>rd</sup> party statement which has not been tested by cross examination. According to Ld. AR, if the AO had suspicion in respect of the purchase of goods worth Rs.1.27 cr. then a matching deduction should have been given in the sales figure which the AO has not done. According to her, the AO erred in finding fault with the assessee only on the ground that assessee's purchases from the five entities are bogus. It was pointed out by the Ld. AR that it is not the case of the AO that assessee is a beneficiary of the accommodation entry provided by Shri Sanjiw Kumar Singh whereas the case of the AO is that assessee has purchased goods from five entities which had carried out some accommodation entry with Shri Sanjiw Kumar Singh.

According to her, without allowing the assessee to cross examine the five entities involved in the case from which assessee had purchased goods, no addition could have been made against the assessee. And according to her, when serious allegation of such nature is being alleged against the assessee then it should have been given opportunity for cross examination without which the action of the AO cannot be sustained and for that she relied on the decision of Hon'ble Supreme Court in the case of CIT Vs. Odeon Builders (P) Ltd. (2019) 110 taxmann.com 64 (SC). Moreover, according to her, the AO erred in estimating the income of the assessee without rejecting the books of account as per section 145 of the Act and, therefore, according to her, the action of the AO cannot be sustained and the Ld. CIT(A) erred in sustaining the addition as made by the AO. Therefore, she wants us to delete the addition.

5. Per contra, the Ld. Addl. CIT, DR Shri Nicholas Murmu supported the order of the Ld. CIT(A) and submitted that the assessee had suppressed the GP rate by inflating the bills from these five entities which have been brought out correctly by the AO. According to him, the assessee had not asked for cross examination which is discernible from the documents available on record. According to him, the judicial decisions relied upon by the Ld. AR cannot come to their rescue. According to him, the AO has correctly noted that in subsequent assessment year i.e. 2015-16 the GP has rose to 10.02% which is double that of the GP rate of this year i.e. @ 5.02%. Therefore, according to the Ld. DR, the AO has correctly estimated the GP rate @ 5.02% of the bogus purchase amounting to Rs.1.27 cr., which action does not require any interference from my part.

6. Heard the rival parties and perused the material available on records. The facts stated hereinabove are not repeated for the sake of brevity. The first point which has taken my attention is regarding estimation made by the AO @ 5.02% of Rs.1.27 cr. According to me, the AO could not have made estimation unless he has rejected the books of account as envisaged in section 145 of the Act. It is not the case of the AO anywhere in his order that the conditions stipulated therein u/s. 145 of the Act have been satisfied before he estimated the income of the assessee which is nothing but the 'best judgment assessment' u/s. 144 of the Act. Secondly, it is noted that the main allegation of the AO is that the assessee has made bogus purchase to the tune of

Rs.1.27 cr. But it was pointed out by the Ld. AR that the sales figure of Rs.11.38 cr. shown by the assessee has not been disturbed. It is elementary that without purchase there could not have been any sales. Thirdly, the AO has accepted the sale figures, so, therefore, question of rejecting the purchases on the statement of an entry operator (3<sup>rd</sup> parties) which was admittedly recorded behind the back of the assessee and not tested on the touch stone of cross examination would not be safe to draw adverse inference against the assessee, since it violated the principles of Natural Justice as held by the Hon'ble Supreme Court in M/s. Odeon Builders (supra). Fourthly, it has been noted by the AO himself that the assessee is supplying the goods to the govt. agencies like Railways. Therefore, the AO also agrees that sales which the assessee has made to the govt. agencies cannot be termed as bogus. Therefore, unless the allegation is proved against the assessee by proper materials in accordance to law, the addition/estimation on the suspicion of suppression of profit without even allowing the assessee to cross examine the person who alleged it cannot be sustained. Therefore, I am inclined to allow the appeal of the assessee and delete the addition made by the AO which has been erroneously confirmed by the Ld. CIT(A).

7. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court.

Sd/-(A. T. Varkey)  
Judicial Member

Date : 15th March, 2022

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Indian Supercraft Industries, 24, 3<sup>rd</sup> floor, N. S. Road, Kolkata-700 001.
2. Respondent – ITO, Ward-36(2), Kolkata.
3. CIT(A), NFAC, Delhi
4. CIT ,
5. DR, ITAT, Kolkata. (sent through e-mal)

/True Copy,

By order,

Assistant Registrar