IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES, "B" BENCH : BANGALORE

Before Shri Chandra Poojari, AM &
Smt. Beena Pillai, JM

ITA No.	A.Y.	Appellant	Respondent
1553/Bang/13	2006-07	M/s.Anantha Refinery Pvt Ltd., Siddapura Village, Bangalore Road, Challakere-577522 [PAN: AABCA5553E]	The Deputy Commissioner of Income Tax, Central Circle-1(2), Bangalore
1554/Bang/13	2007-08		

Appellant by : Shri K.R.Pradeep &
Ms. Girija, G.P. - Advocates

Respondent by : Dr.Manjunath Karkihalli, CIT-DR

Date of Hearing : 10-03-2022
Date of Pronouncement : 29-04-2022

O R D E R

PER CHANDRA POOJARI, A.M:

The assessee originally came in appeal before this Tribunal in ITA Nos.1553, 1554 & 1555/Bang/2013 for the AYs.2006-07, 2007-08 & 2011-12, wherein the assessee raised various grounds with regard to the additions made by the AO in these assessment years with regard to bogus purchases.

2. The facts relating to AY.2006-07 and 2007-08 as recorded in earlier order of the Tribunal are as follows:

3. The assessee is engaged in the business of edible oil extraction and trading. There was a search operation in the case of the assessee on 3.12.2010. In compliance to the Notices u/ s 153A of the Act, the assessee filed its returns of income for the AYs under consideration, admitting total incomes at Rs.23,96,810/- and Rs.33,96,670/- respectively. During the course of assessment proceedings, on the basis of findings of the search conducted in the assessee's premises and subsequent enquiries, according to the AO the purchases made in the name of three concerns, as detailed below, were non-genuine:

Name of the concern	Purchase made for the AY 2006-07	Purchase made for the AY 2007-08
Sree Siddeswara Commercials, Solapur	Rs.3,19,48,385	Rs.3,45,64,480
Spoorthi Commercials, Solapur	Rs.3,11,54,321	Rs.4,29,18,090
Priya Commercials, Solapur	Rs.3,31,94,300	Rs.4,19,82,580
Total	**Rs.9,62,97,006**	**Rs.11,94,65,150**

4. The AO had noticed that substantial purchases of sunflower de-oiled cakes were made from the above concerns. After analyzing the evidence gathered during the course of search and subsequent inquiries, the AO made out that —

> the invoices on supplies showed that the bills in respect of these bills in respect of those three suppliers did not contain the stamps of Agricultural Produce Marketing Committee [APMC], Check-posts' seals etc., as in the case

of other suppliers from Maharashtra/ local APMCs in Karnataka;

> Enquiries conducted at the addresses given in the account form and invoices of suppliers at Solapur showed that the said parties were not found at the addresses given by them;

> The analysis of the bank statements of the three parties showed that the payments made by the assessee to the above parties were immediately withdrawn on the date of credit to the said parties. This pattern was found in the accounts with Chitradurga Co-operative Central Bank Ltd., Chellekere as well as State Bank of Mysore, Chellakere;

> the account opening forms of Priya Commercials with Chitradurga Dist Co-Op. Central Bank Ltd was not available. However, the account with SBM, Challekere showed that the above concern was a proprietary concern of one Smt. Suvarna and the introducer to the bank account was Shri N Nagabhushana who is the director of the assessee;

> similarly, the account opening form of Spoorti commercials with the Chitradurga Dist Co-op Central Bank Ltd., Chellekere showed that the name of the proprietor as Sri A. Shivaraj and the account was introduced by Sri N. Naghabushana. This is in contrast to the proprietor shown in the account opening form of SBM and that similar findings were also noticed with regard to the bank accounts of the three concerns with SBM, Chellekere Branch;

> Shri Nagabhushana, Director of the assessee admitted, on oath, that he had interacted with three Solapur parties only through one Sri Shivaraj. However, he was unable to produce or where-about of the above parties or Sri Shivaraj;

5. After further enquiries with the Chief Manager of SBM, scrutinizing the bank accounts, withdrawal forms, cheques for having withdrawn the monies from the above said banks and also enquiries made through the Sales Tax Offices at Solapur, the AO came to the conclusion that —

(i) The said parties from whom the assessee had stated to have made purchases were not available at the addresses shown and never operated from those addresses either;

(ii) That the payments made by the assessee to the said parties were into the accounts introduced by the assessee etc., and in the same bank where the assessee also held accounts;

(iii) The deposit of cheques into bank accounts of the said parties were by same persons who had been making cash and cheque deposits for the assessee as well;

(iv) All the payments made through cheques by the assessee were withdrawn immediately by cash. Employees of the assessee had a role to play in the deposits as well as their withdrawals in respect of those three parties;

(v) The assessee was unable to say the whereabouts of the said suppliers;

(vi) The assessee alleged to have interacted only through Sri Shivaraj, an agent, in respect of the said purchases, but, unable to produce him or say his whereabouts;

(vii) The materials never came from Maharashtra as attributed; &

(viii) The bank accounts opening forms show different proprietors for the same concern.

6. After taking the above facts into consideration and for the elaborate reasons recorded in the respective assessment orders, the AO concluded the assessments u/s. 153A r.w.s.143(3) of the Act dated 13.02.2013, determining the assessee's incomes at Rs.9,86,93,820/- and Rs. 12,28,61,820/- whereby disallowing the expenses on purchases at Rs.9,62,97,006/- and Rs.11,94,65,150/- respectively.

7. Aggrieved, the assessee took up the issues, among others, with the CIT (A). After taking into account the assessee's contentions and also the reasoning of the AO in disallowing the purchases of Rs.9.62 crores and Rs.11.94 crores allegedly made from the above named three entities and since the assessee was unable to contradict the observations of the AO with any credible documentary evidence, the CIT (A) upheld the stand of the AO for both the AYs for the following reasoning, namely:

> "10. (On page 8) ……. the inference drawn is clear and certain that these purchases shown from the persons claimed are not genuine. The other argument of the appellant that he would have made purchases to cause production/ sales is examined. Even if the appellant has made some purchases, it is for the appellant to explain the extent and amount and manner in which these have been made, All evidences show that these are not effected through account payee cheques (as purchases shown through account payee cheques and to parties claimed are held to be bogus), so they would either be through some unaccounted sales or unaccounted production or by payments in cash [out of drawings from these fictitious bank accounts in the names of these 3 parties] in which case, the appellant would be covered by the provisions of section 40A (3) and these cannot be allowed against the income. The appellant is unable to show that purchases as claimed to have actually been made in the light of glaring evidences brought on record by the assessing officer.
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> 11. The main argument of the appellant is that —
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> "The AO ought to have appreciated the fact that the responsibility of the appellant ends once he produces the following details during the course of assessment:
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> (a) Produce an invoice;
>
> (b) Produce the delivery challan;
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> (c) Details of payments made in regular course through account payee cheques; &

(d) Details of products manufactured with input output ratio.

Under the facts and circumstances narrated above, this argument cannot be accepted.

12. The onus lies entirely on the appellant to show from whom and in which manner the purchases claimed have actually been made. The appellant has failed to do so. Merely because the accounts of the appellant are audited does not explain anything in light of the evidence unearthed. It is not a case where purchases are made in the 'normal course of business' as claimed but is a preplanned facade created to show 'a/c payee purchases' from the said parties which never existed and this fact was in the knowledge of the appellant.

Even during the course of appeal, the appellant has not forwarded any further evidence or argument in this regard. I am unable to differ with the findings of the assessing officer. The same are upheld."

8. Against the same, the Tribunal given findings in ITA No.1553, 1554/Bang/2013 dated 13.02.2014 as follows:-

"6. We have carefully considered the submissions of both the parties, perused the relevant materials on record and also the case laws on which the learned AR had placed strong reliance.

6.1. It was a fact that the premises of the assessee as well as the residential premises of the directors of the assessee were subjected to search operations by the Revenue. During the course of assessment proceedings, the AO noticed that the purchase of raw materials — sunflower [SF] cakes — to the extent of Rs. 17.5 crores and Rs.26.79 crores respectively were made during the periods under dispute. He had treated the purchases made from three entities, namely, M/S. Sree Siddeswara Commercials, M/S. Spoorthi Commercials and M/S. Priya Commercials of Solapur to the extent of Rs.9.62 crores and Rs. 11.94 crores as bogus for the AYs 2006-07 and 2007-08 respectively for the following reasons:

- that the parties from whom purchases claimed to have been made were not produced for verification;

- enquiries revealed that the alleged suppliers were not located in the addresses given;
- enquiries with the Sales Tax authorities at Solapur revealed that the sales-tax registration numbers shown on the invoices given by the alleged suppliers were bogus and that no entity by the names shown in the invoices were registered with them;
- stamps of APMC were not stamped on the purchase bills and stamps of check-post were also not stamped in the invoices;
- documents relied on by the assessee viz., receipt for goods, weighing slips, inward slips used were all self-made;
- neither any independent evidence to prove the purchases made were from the said parties nor the parties' identities were established;
- the assessee had used two of its employees to operate and withdraw monies from the bank accounts of the alleged suppliers;
- the genuineness of the transactions was not proved;
- no details of manufacturing and trading activity carried on separately were produced to compare the input/ output ratio with similar units in the industry.

Accordingly, the AO had concluded the assessments for the AYs 2006-07 and 2007-08 under consideration, determining the incomes of the assessee at Rs.9.86 crores and Rs.12.28 crores respectively.

6.2. This has been disputed by the learned AR, among others, that the assessee was required 20 to 30 truck-loads of SF cakes as raw material every day for its business and such purchases were made through Shri Shivaraj, agent. Since the business relationship was discontinued from the FY 2006-07, there was no occasion for the assessee to contact Sri Shivaraj who was acting previously as an agent for the transactions with those three erstwhile suppliers. It was also an un-denying fact that the AO had not found any infirmity with the purchases of raw materials from other suppliers other than those three entities

(supra). It is also apparent that those three entities have also operated bank accounts from the same bank where the assessee has been maintaining an account and that the amounts credited to their accounts were withdrawn subsequently may give rise to suspicion as observed by the AO. However, there was no any credible evidence to suggest that the assessee had not made any purchase of materials at all.

6.3. After having gone through the facts of the issue in depth, no doubt, there were certain irregularities in the purchase of raw materials by the assessee which do not mean to take a stand altogether that the assessee had not purchased SF cakes at all. Obviously, the AO had arrived at a conclusion on the fact that the account opening forms of the alleged suppliers — Priya Commercials & Spoorthi Commercials — the introducer was none other than the director of the assessee and, thus, the persons who have operated the bank accounts of the assessee and that of the alleged suppliers were the same. This was countered by the assessee that the amounts deposited in the bank accounts were immediately withdrawn cannot be a sole ground to suspect that purchase itself was bogus/ farce since the assessee had only acted as an introducer to facilitate the suppliers to open their accounts locally, but, not beyond that. However, the AO had failed to record the statements on oath the employees of the assessee who alleged to have operated the bank accounts to withdraw the monies from the bank accounts of the alleged suppliers, to find out the veracity of the assessee's claim. In this regard, we would like to refer to the judgment of the Hon'ble Gujarat High Court in the case of CIT v. M.K. Bros reported in 163 ITR 249 (Guj) wherein it has been held that 'nothing is shown to indicate that any part of the fund given by the assessee to these parties came back to the assessee in any form. ...There are certain doubtful features, but the evidence is not adequate to conclude that the purchases made by the assessee from these parties were bogus.. ...when that is so, it be said that the entries for the purchases of the goods made in the books of account were bogus entries.' There is, thus, force in the averment of the assessee that once the goods were delivered to the assessee, payments were made to the agent of the suppliers and that the assessee was not expected to find out the credentials of the agent, particularly, when the payment was made only after of the receipt of supply.

Admittedly, there were certain irregularities in the purchase of SF cake with regard to the transactions with the alleged three above named suppliers. However, it is pertinent to observe that the AO had not disputed the sales, but, only raised a needle of suspicion with regard to the purchase of raw materials from those three suppliers. One should admit that there cannot be any sales without corresponding purchases. In this connection, we would like to refer to the findings of the Hon'ble ITAT [SB], Chandigarh in the case of J R Solvent Industries (P) Ltd v. ACIT 24 DTR 387 wherein it has been observed that 'Purchases of raw material from an unidentified supplier cannot be treated as bogus when it is established from day-to-day records that the said quantity went into production and the production and sales have been accepted by the Department'. Ostensibly, the books of accounts of the assessee for both the AYs under dispute have not been rejected by the AO and, thus, the quantitative particulars of purchases, sales, opening stock and closing stocks disclosed in the financial statements of the assessee were to be considered as correct. Moreover, the AO had accepted the sales as disclosed by the assessee for both the AYs under consideration which cannot, apparently, be achieved without corresponding purchases. Since the suppliers were not produced for examination by the AO, no adverse inference could be drawn to the effect that the entire purchases were bogus. An inference can be drawn that the parties/ sellers were bogus, but not the entire purchase of materials themselves. In this connection, we refer to the judgment of the Hon'ble Bombay High Court in the case of CIT v. M/S. Nikunj Eximp Enterprises Pvt. Ltd in ITA No.5604 of 2010 wherein it has been held that ' ..... The Tribunal records that the books of accounts of the respondent-assessee have not been rejected. Similarly, the sales have not been doubted and it is an admitted position that the substantial amount of sales have been made to the Government Department i.e., Defence Research and Development Laboratory, Hyderabad. Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were in fact made. In our view, merely because the suppliers have not appeared before the assessing officer or the CIT (A), one cannot conclude that the purchases were not made by the respondent-assessee. The

AO as well as CIT (A) have disallowed the deduction or Rs. 1.33 crores on account of purchases merely on the basis of suspicion because the sellers and the canvassing agents have not been produced before them. We find that the order of the Tribunal is well a reasoned order taking into account all the facts before concluding that the purchases of Rs.1.33 crores was not bogus. .....…"

6.4. Another salient feature which we have observed was that the disallowances of the entire purchases of Rs.9.62 crores and Rs.11.94 crores from the alleged three entities for the AYs 2006-07 & 07-08 respectively have pushed the GP to an unimaginable and unprecedented scale at 37% and 35% respectively. Moreover, the GP ratio declared by the assessee was consistent from the AYs 2003-04 to 2009-10 and was in the range of 8% to 10%. However, due to additions resorted to by the AO on account of purchases from the alleged bogus parties, the GP ratio has shot up to amazingly at 37% and 35% for the AYs 2006-07 and 2007-08 respectively. However, the GP ratios for the assessment years, namely, 2003-04, 2005-06, 2008-09 and 2009-10 were untouched by the AO. The input-output ratio admitted by the assessee is consistent. At this point of time, we would like to refer to the financial statements of the assessee which were made available at the time of assessment proceedings that the assessee had mainly concentrated on the activity of manufacturing of the products and that of the trading activity was at the barest minimum or say negligible. However, the input-output ratios arose in the AYs 2006-07 and 2007-08 was only due to the additions made by the AO on account of alleged purchases from the bogus parties. For the assessment years 2006-07 and 2007-08, due to disallowance of the purchases of raw materials as bogus by the AO, the assessee's income has been increased by 41 and 36 times and the disallowance of purchases at 37% and 35% respectively [Refer: Page 4 of the PB]. This analysis strengthens the assessee's argument that the purchases made by the assessee were genuine. In the given circumstances, an interpretation can be inferred that the purchases may be from the bogus parties; nevertheless, the entire purchases themselves were not bogus;

6.5. In the meanwhile, we would like to refer to the petition for admission of additional evidence dated 23.1.2014 submitted by the assessee wherein it sought the permission of this Bench to submit the gross profit margins of comparable companies carrying on similar business who were also the members of Solvent Extractors Association of India, according to which, the gross profit/ sales of the industry averages were at 6.52% and 5.26% whereas the assessee's profit/ sales were at 7.81% and 6.94% for the AYs 2006-07 & 2007-08 respectively. In comparing the GP margins of the assessee with that of the GP margins and input: output ratios in this line of business were at 7.81% and 6.94% [GPI and 1.79 and 1.28 [input/output ratios] for the AYs 2006-07 & 2007-08 respectively.

6.6. We shall now proceed to analyze the judicial views on the issue, chronologically, as under:

(i) Account payee cheques:

The ITAT, Jodhpur Bench in the case of Jagdamba Trading Company v. ITO reported in 107 TTJ 398 (Jd) has held that 'In the absence of any proof to show that the amount paid by the assessee through cheque for purchases from a party was returned and deposited in the account of the assessee, said purchases cannot be held to be bogus. '

(ii) In the case of DCIT v. Adinath Industries reported in 252 ITR 476 (Guj), the Hon'ble Gujarat High Court has held that '…..... Simply because the bank account of seller and purchaser was in the same bank and the amount credited in the purchaser account was withdrawn on the same day without proving that the amount had come back to the assessee's hands, the addition on account of bogus purchases cannot be made in the case of the purchaser of goods. The Tribunal pointed out that at best it could be inferred that these parties were set up by somebody else and the reasons could be manifold for that. It is very much surprising that in the instant case the assessing officer has drawn a presumption that amount has come back in the assessee's hands, without any evidence whatsoever merely on the basis of withdrawal of amounts from the account of suppliers. "

(iii) Non-production of the parties for examination:

In the case of Canara Bank v ITO (2009) 125 TTJ (Nag) 819, the Hon'ble Nagpur Bench of the Tribunal has held that '68. It is a well-settled law that law does not compel a man to do that which he cannot possibly perform as held by the Supreme Court in the case of Onkarmal Nathmal Trust (supra). The Supreme Court in the said case has held as follows:

"Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over, there the law will in general excuse him, and though impossibility of performance is a good excuse. Under certain circumstances compliance with the provisions of statutes which prescribe how something is to be done will be excused. Thus, in accordance with the maxim of law, lex non cogit ad impossibilia, if it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God or the King's enemies, these circumstances will be taken as a valid excuse. "

(iv) Enquiries made by the Sales-tax authorities:

The Jodhpur Bench of the Tribunal in the case of ITO v. Permanand reported in 107 TTJ 395 has held that 'No addition can be made in the hands of the assessee on the basis of observations made by a third party. The addition rests mainly only on the observations of the Sales tax Department. The assessee was never associated with the enquiries made by the Sales Tax Department to that extent. The satisfaction of the AO himself is of the prime importance while making assessment of an income and these duties cannot be performed by substituting the satisfaction of someone else. The assessee did pay for the purchases, he made from the two parties, through cheque. The statements or even the affidavits of sellers cannot be utilized against the assessee. The assessee has discharged the primary onus cast on him by showing the purchases, their entries in the books of accounts, payments by way of account payee cheques; producing the vouchers of sales of the goods. The AO has miserably failed to bring on record any clinching evidence to prove that these alleged purchases were verily bogus and not genuine.

(v) With regard to the **purchases made from those parties may be bogus, but, purchase itself cannot be bogus**, the Hon'ble Gujarat High Court has, in the case of CIT v. Bholanath Poly Fab Pvt Ltd reported in (2013) 355 ITR 290 (Guj), held that "Whether the purchases themselves are bogus or whether the parties from whom the purchases were allegedly made is a question of fact. The Tribunal having examined the evidence on record came to the conclusion that the assessee did purchase the cloth and sell the finished fabrics. Therefore, as a natural corollary, not the entire amount covered under such purchases, but, the profit element embedded therein would be subject to tax." While confirming the findings of the Tribunal, the Hon'ble High Court has held that **the parties from whom the purchases made were bogus but purchase itself was not bogus.**

6.7. Taking into consideration of all the facts and circumstances of the issue as discussed in the fore-going paragraphs, the following facts emerge, namely:

- purchases made from those three entities may be bogus, but, the purchase of materials themselves cannot be termed as bogus;
- the AO had not made any independent inquiry on his own to unearth the veracity of the assessee's claim that it had, in fact, purchased materials- from those alleged three entities based at Solapur, instead, he had solely relied on the report of the Sales Tax Authorities of Solapur;
- no books of account of the assessee for both the AYs were rejected by the AO;
- in the event, the entire alleged purchases of materials from those three entities were to be disallowed as resorted to by the AO in the assessment orders, the GP of the assessee has been touched a level at 37% and 35% for the AYs 2006-07 & 07-08 respectively. These were abnormal and impractical to achieve such a phenomenal percentage of GP in this line of business; **when the Department accepts GP for preceding and subsequent AYs to the AYs in dispute**

- the comparison of gross profit margins in this line of business were in the range of 5.81% to 7.15% whereas the assessee's GP has been posted at a higher percentage, namely, at 7.81% and 6.94% for the AYs 2006-07 & 07-08 respectively [Refer: On Para — 6.6 (supra) & Statements at pages 1 & 2 of Volume 2- PB]:
- the assessee had failed to establish credibly the sources from where it had procured the materials;
- the assessee had heavily relied on self-made weighing slips, inward slips etc.,
- the AO had not brought on record any credible documentary evidence to pin down the assessee in the alleged transactions;
- The re-assessment proceedings were started sometime in the early 2013 whereas the alleged transactions took place way back in the FYs 2005-06 & 06-07, i.e., after a lapse of nearly five years. Thus, there is reasonableness in the assessee's pleading for non-producing/ non-locating of the agent Sri Shivaraj for examination by the AO; &
- The assessee, on its part, had steadfastly failed to identify the origin of the alleged purchase of sunflower cakes;

6.8. In view of the above facts and also, primarily, even though the AO took a stand that the purchases stated to have been made from those three parties were non-genuine, but, equally he failed to unearth its origin so as to disallow the entire expenses on such purchases. There could not have been sales to the extent of Rs.34.58 crores and Rs.45.05 crores of finished goods for the AYs 2006-07 and 2007-08 respectively without corresponding purchase of raw materials.

6.9. Taking into account all the above facts, in conformity with the judicial views (supra) and also keeping in view (i) the inputs/ out-puts ratio — Industry standard — [Refer: Detailed statement on page 1 of Volume 2 - PBI and (ii) the letter from the Solvent Extractors' Association of India dated 4.6.2012 wherein it has been affirmed that the oil contents in sunflower cake at 10 to 12 per cent [Source: On page 3 of Volume 1 PB],

> we are of the view that disallowance of 20% on the purchases from those three entities for both the years under dispute, would be reasonable which would also suffice the short-comings as pointed by the AO. Therefore, disallowances on purchases made from those three entities are restricted to Rs.1,92,59,401/- and Rs.2,38,93,330/- for the assessment years 2006-07 and 2007-08 respectively. If the purchases made from the above three parties are disallowed by 20%, then the assessee's GP would be at 14.12% and 13.60% for the AYs 2006-07 and 2007-08 respectively, instead of 8.56% and 8.30% declared by the assessee and 37% and 35% fixed by the Assessing Officer on account of disallowance of the entire alleged purchases of materials from those three entities. The GP at 14.12% and 13.60% is reasonable when compared to the GP returned by the assessee and accepted by the Department at 10%, 9%, 10, 8% and 8% for the AYs.2003-04 to 2005-06 and 08-09 and 2009-10 respectively. It is ordered accordingly".

9. Against this, the Revenue went in appeal before the Hon'ble jurisdictional High Court in ITA No.344/2014 and another. The Hon'ble jurisdictional High Court vide order dt.04-01-2021, remitted back the matter to the file of the Tribunal with some observations, wherein the following questions were framed:

> "(i) Whether the Tribunal was correct in holding that the assessing officer did not make any independent enquiry, whereas, in fact it was the assessing officer who had initiated enquiry and requested the sales tax Department to investigate the existence of the three purchase parties at Solapur?
>
> (ii) Whether the Tribunal was correct in holding that there was no independent enquiry made by the assessing officer except for the report of the sales tax authorities, which cannot find basis for coming into conclusion of entire amount of purchases being bogus and considering the facts the tribunal has ordered for disallowance of only 20% of the purchasers from three entities for each of the assessment years involved?"

5. The Hon'ble High Court vide judgment dt.04.01.2021 remitted the matter back to the Tribunal with the following observations:-

> "7. We have considered the submissions made by learned counsel for the parties and have perused the record. From perusal of the order passed by the Assessing Officer and in particular paragraph 3.3 and 3.1, it is evident that Assessing Officer has conducted an enquiry. Paragraph 3, 3.1 and relevant extract of paragraphs 4, 4.2 and 4.3 and paragraph 7, read as under:
>
> > 3. As the invoices for supplies of SF oil cakes from the above three parties did not contain stamps of APMC, Check Post seals, etc., in order to ascertain the genuineness of the above purchases, enquiries were made in the addresses at Solapur, mentioned in the invoices of suppliers mentioned above. Also, the addresses given by the above suppliers to the bank at the time of opening the account were obtained and enquiries were caused at such addresses.
> >
> > 3.1 Enquiries at the addresses given in the account opening forms and the invoices of suppliers at Solapur showed that the above parties were not found in the places / addresses given by them. Enquiries were caused through the jurisdictional Sales Tax Officer of the above parties of Solapur. The above officer after enquiry has filed a report stating that the above there parties were never present at the addresses given in the invoice bills issued to the assessee and that they never carried on any such business. In this regard, enquiries were also made with the owners of the premises shown in the above said addresses at Solapur. The report of Sales Tax officer (VAT-C013) dated 20.12.2012 is scanned and reproduced below.
> >
> > 4. Further on analysis of banks statements of the above there Solapur Parties, it was found that payments made by the assessee to the above parties were immediately withdrawn on the date of credits to the account of the said three parties as detailed below:

4.2 The Chitradurga Bank furnished account opening forms of M/S Sree Siddeswara Commercials and M/S Spoorthi Commercials

4.3 The above introducer of the account of M/S Priya Commercials is none other than the director or the assessee-company.

7. An analysis of the above documents and the answers of the chief manager indicate that a common person had signed the pay-in-slips of assessee company, at the reverse of the cheque leave of the assessee company for withdrawal of cash, the pat-in-slips of the three Solapur parties and the cheque leaves of the Solapur parties and the cheque leaves of the Solapur parties on the reverse side for receiving cash from the Bank.

8. Thus, from perusal of the relevant extracts of the order passed by the Assessing Officer, it is axiomatic that the Assessing Officer has conducted an independent enquiry and thereafter, has recorded the conclusion with regard to genuineness of the transaction as follows:

1. *The assessee could not produce the parties from whom purchases are claimed to be made.*
2. *Enquiries made showed that the alleged suppliers were not present at the address given by them.*
3. *Enquiries with the sales tax officers revealed that the Sales Tax Registration Number shown on the invoices given by the alleged suppliers were bogus.*
4. *Sales Tax Authorities have categorically stated that no entity by the names shown in the invoices ever were registered with them.*
5. *Stamps of APMC are not present in the purchase bills.*
6. *Stamps of Check posts are not present in the invoices.*

7. *The documents relied upon the assessee viz., receipt for goods, weighment slips, inward slips are all self made.*

8. *There is no independent evidence to prove the purchases made form the above said Solapur parties.*

9. *Identity of the three parties has not been established by the assessee.*

10. *The assessee has used at least two of its own employees to operate and withdraw from the bank accounts of the alleged suppliers.*

11. *Assessee has not proved the genuineness of the transactions.*

9. However, the tribunal vide impugned order has held that there is no credible evidence to suggest that assessee has riot made any purchase of material at all and even though an inference can be drawn that the parties / sellers were bogus but not the entire purchase of materials.

10. From perusal of the order passed by the tribunal, we find that the finding recorded by the tribunal that the Assessing Officer has not made any independent enquiry is perverse. Therefore, the substantial questions of law framed in this appeal are answered in the affirmative and in favour of the revenue. However, on the basis of meticulous appreciation of material available on record, the Assessing Officer has recorded the conclusions, which has been reproduced above, however, the tribunal has not dealt with the conclusions of the Assessing Officer and in a cryptic and cavalier manner has allowed the appeal preferred by the assessee. The tribunal has also failed to appreciate that in fact, the burden was on the assessee to establish the genuineness of the transaction.

In view of preceding analysis, the impugned order passed by the tribunal is hereby quashed and the matter is remitted to the tribunal to decide the issue afresh in the light of observations made in this judgment."

10. Hence, these appeals coming for fresh hearing before this Bench.

11. The assessee has filed a petition for admission of additional grounds stating that in these appeals for the AY 2006-07 and AY 2007-08, the assessment was framed u/s 143(3) r.w.s 153A of the Act vide orders dated 13.02.2013 consequent to issue of a notice u/s 153A of the Act. Further the search purportedly u/s 132 was conducted on 03.12.2010 and a notice u/s 153A was issued on 16.04.2012. For both the years the assessment was completed prior to the date of search and nothing was pending. Hence it is case of non-abated assessment years. It has been held by the jurisdictional High Court in CIT vs. IBC Knowledge Park (P.) Ltd. [2016] 385 ITR 346 and several other decisions of various other High Courts like Pr. CIT vs. Meeta Gutgutia [2017] 395 ITR 526 (Delhi) which have been widely relied on in deciding the proceedings under the Act. It has been ruled by the Courts in the above decisions that unless there is an incriminating material seized at the time of search, completed assessment shall not be disturbed. In this case there is no reference to seized material let alone incriminating material in the assessment order. Such a presence of incriminating material has been held to be foundational and jurisdictional fact which goes to the root of the matter i.e, whether at all a 153A notice could be issued in this case. A question which goes to the root of the matter can be raised at any stage including in later appellate proceedings. In view of the forgoing the appellant herein submits the following common additional/specific grounds in elucidation of its grounds

of appeal for adjudication in the interest of justice for both the years:-

1. The proceedings of search and all other subsequent proceedings are bad in law, without jurisdiction and invalid.
2. The notice u/s 153A and subsequent proceedings are without jurisdiction and bad in law.
3. The order u/s 153A r.w.s. 143(3) is bad in law, time barred and infructuous.
4. The proceedings are bad in law in the absence of requisite recording of satisfaction of liability as underscored in the decision of the jurisdictional High Court in CIT vs. IBC Knowledge Park (P.) Ltd. [2016] 385 ITR 346.
5. The report and statement recorded from third parties have been relied on without furnishing all the material in the possession of the authorities below and without affording an opportunity for cross examination of the persons whose statement/report has been relied on thereby violating the principles of natural justice.

12. The ld. AR relied on the judgment of the Supreme Court in the case of *National Thermal Power Co. Ltd. v. CIT, 229 ITR 383 (SC)*.

13. Ld.AR submitted that after filing the return of income, a notice u/s 143(2) of the Act dated 15.10.2012 was served on the assessee on 18.10.2012. Subsequently, a notice u/s 142(1) dated 26.10.2012 and 11.12.2012 were served on the assessee and the same is to be found in page 16 to 22 of the paper book. Perusal of this notice and also perusal of the assessment order does not bring out that assessee was asked to produce the parties at any point of time. Hence it is incorrect for the AO to give a finding that

the parties could not be produced. The same is not based on any record. Hence this is factually incorrect.

14. The Ld.AR submitted that during hearing the revenue stated that the statement u/s 132(4) of N.Nagabhushan was recorded on 06.12.2010 and also relied on Q.No.16 of the statement which reads as follows:

> ''I am showing you the seized material marked as A-2/ARPL/11 which is seized today i.e, 22.12.2010 which contains purchase bills along with weighment slips etc., with respect of purchases for the F.Y.2005-06 & 2006-07….''

15. The ld. AR submitted that that these statements have not been relied on either in the orders passed by the AO, the CIT-Appeals or by the ITAT. The above statement purportedly recorded by the search officer has not been relied on or used by the AO. Hence it is not relevant for the proceedings hereunder. Moreover the same has been produced only during the hearing before the tribunal, hence cannot be relied on. Without prejudice, the veracity of this statement itself is not beyond doubt as it appears the statement was not recorded on the date and premises mentioned in the statement. While the statement is purportedly recorded on 06.12.2010 it makes a mention of material seized on 22.12.2010, reference may be made to questions 16 and 21. So it is unthinkable that the AO could have recorded the statement on 06.12.2010. When this discrepancy was pointed out the learned DR tried to brush it away as trivial. However, such discrepancy renders the statement not reliable. Further the reference to seized material in Questions 16 and 21 is all books of accounts, vouchers and documents maintained in the regular course of carrying on of business and nothing is incriminating. Even the

search officer has not pursued any line of thinking that there was something wrong. These material supports the case of the assessee and establishes that the purchases for these years was well supported with multiple documents, stock registers, way bills and invoices, bank transactions, day book ledger etc., far from creating a doubt or suspicion it actually supports the case of the assessee. Further as per sections 132(4A) and also 292C of the Act, the documents etc., found in the control and possession of the assessee at the time of search shall presume to be true. Since these documents indicate that purchases have been made, it is not open for the authorities to question the genuinity or the veracity in view of the statutory presumption. The presumption binds the AO and also the investigating officer as they are authorities under the Income Tax Act. When the statute declares a document and its content found at the time of search as true it is incorrect to cast and suspicion on the same and such document cannot be called as incriminating in nature.

16. The ld. AR further submitted that the grounds 1 to 3 were not pressed in the earlier appeal proceeding before the tribunal. However, since the High Court has remitted the issue back with a direction to decide the issue afresh on the basis of meticulous appreciation of material available on record it is submitted that the issue of jurisdiction and application of principles of natural justice are not rights which can be waived by the assessee as held by Supreme Court in *(2012) 4 SCC 307- Kanwar Singh Saini vs. High Court of Delhi* as follows:-

> "22. There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the

> parties nor by a superior court, and if the court passes order/decree having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or a tribunal becomes irrelevant and unenforceable/ inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute……..”

17. We have heard both the parties and perused the material on record. These additional grounds are regarding the assumption of jurisdiction u/s. 153A of the Act. Further, we make it clear that there is no restriction imposed by the Hon'ble High Court with regard to non-admission of any additional ground before this Tribunal. However, the Hon'ble High Court of Karnataka vide judgment dated 04.01.2021 has remitted the issue to the Tribunal in the light of the observations made therein. Being so, the issues before the Tribunal cannot extend beyond the scope of the issues before the High Court and the observations contained in the judgment. Therefore, we decline to entertain the additional grounds filed by the assessee before us at this stage.

18. Further, this ground was raised on earlier occasion before this Tribunal by way of main ground. However, the assessee has not pressed this ground before this Tribunal and dismissed as not pressed. Now the assessee wants to reargue this ground for which there is no change in circumstances. Accordingly, we dismiss the additional grounds raised by the assessee in both the appeals as unadmitted.

On merits

19. He submitted that the entire assessment order is based on enquiries conducted much after the search and that too based on material which was never given to the assessee. It has been held that concluded assessment can be disturbed only if there is a material which are incriminating in nature and seized during the course of search u/s 132 of the Act. The material seized in this case is all routine and regular records and books of accounts and none of it can be called as incriminating in nature. In any case the AO has not declared any material as incriminating in nature which clinches the issue in favour of the assessee.

20. The ld. AR submitted that the enquiries allegedly made through the sales tax authorities mentioned in page 7 to 11 of the assessment order was never put to the assessee and for the first time the assessee came to know of the details mentioned in these pages only through the assessment order. The AO in para 3 page 6 of the assessment order has relied on the report of Sales Tax Officer (VAT-C013) dated 20.12.2012. Perusal of the page 7 indicates that the report dated 20.12.2012 is received by the AO on 28.12.2012. In this regard, the show cause notice issued by the AO dated 11.12.2012 is as follows:

> 'On enquiries at the above given addresses and with the jurisdictional sale tax office at Solapur, it is found that the above parties were not in existence. In view of the above it is proposed to treat the above purchases as not genuine, and consider the above claim as inflation of purchases and add the sum of ….. to your returned income. You are requested to show cause why the above addition should not be made.''

21. According to him, it is strange that the AO has raised the above query on 11.12.2012 itself when the sales tax report containing enquiries made came to the knowledge of the AO only on 28.12.2012. Further the sales tax officer has reportedly relied on the report of his inspector who appears to have conducted the spot verification on 19.12.2012 and reported. Thus even before the alleged spot inspection and the alleged report by the sales tax authorities, the AO herein had concluded almost two weeks in advance that the suppliers were non-existent. This clearly indicates that the disallowance was pre-meditated and not based on any such report. It is also strange that these reports were used in assessment order without providing the same to the assessee. The Supreme Court in the case of *Suraj Mall Mohta & Co. vs. Visvanatha Sastri & Anr. in 26 ITR 1* held as under:-

> "When an assessment on escaped or evaded income is made under the provisions of s. 34 of the Indian IT Act, all the provisions for arriving at the assessment provided under s. 23(3) come into operation and the assessment has to be made on all relevant material and on evidence and the assessee ordinarily has the fullest right to inspect the records and all documents and materials that are to be used against him. Under the provisions of s. 37 of the Indian IT Act the proceedings before the ITO are judicial proceedings and all the incidents of such judicial proceedings have to be observed before the result is arrived at. In other words, the assessee would have a right to inspect the record and all relevant documents before he is called upon to lead evidence in rebuttal. This right has not been taken away by any express provisions of the IT Act but the impugned act contains a mandate in sub-s. (4) of s. 7 to the effect that "no person shall be entitle to inspect, call for, or obtain copies of, any documents, statement or papers or materials furnished to, obtained by or produced before the Commission or any authorised official in any proceedings under this Act." There is a proviso to sub-s. (4) which says that for the purpose of enabling the person whose case or points in

> whose case is or are being investigated to rebut any evidence brought on the record against him, he shall, on application made in this behalf and on payment of such fees as may be prescribed by rules be furnished with certified copies of documents, statements, papers and materials brought on the record by the Commission. This little mercy shown to the person whose case is being investigated by the Commission is no substitute for the fullest right of inspection which under ordinary law and the CPC and in a judicial proceeding a person would have in order to meet the case made against him."

22. Without providing the material adverse to the assessee, no addition should have been made and this is clearly against the principles of natural justice as discussed by Supreme Court in the case of *Kishin Chand Chellaram vs CIT – 125 ITR 713*. Relevant portion in page 719 to 721 of 125 ITR is extracted hereunder:

> '**5.** The sole question which arises for determination in this appeal is whether there was any material evidence to justify the findings of the Tribunal that the amount of Rs. 1,07,350 said to have been remitted by Tilok Chand from Madras represented the undisclosed income of the assessee. The only evidence on which the Tribunal could rely for the purpose of arriving at this finding was the letter dt. 18th Feb., 1955, said to have been addressed by the manager of the Punjab National Bank Ltd. to the ITO. Now, it is difficult to see how this letter could at all be relied upon by the Tribunal as a material piece of evidence supportive of its finding. In the first place, this letter was not disclosed to the assessee by the ITO and even though the AAC reproduced an extract from it in his order, he did not care to produce it before the assessee or give a copy of it to the assessee. The same position obtained also before the Tribunal and the High Court and it was only when a supplemental statement of the case was called for by this Court by its order dt. 16th Aug., 1979, that, according to the ITO, this letter was traced by him and even then it was not shown by him to the assessee but it was forwarded to the Tribunal and it was for the first time at the hearing before the Tribunal in regard to the preparation of the supplemental statement of the case that this letter was shown to the assessee. It

will, therefore, be seen that, even if we assume that this letter was in fact addressed by the manager of the Punjab National Bank Ltd. to the ITO, no reliance could be placed upon it, since it was not shown to the assessee until at the stage of preparation of the supplemental statement of the case and no opportunity to cross-examine the manager of the bank could in the circumstances be sought or availed of by the assessee. It is true that the proceedings under the income-tax law are not governed by the strict rules of evidence and, therefore, it might be said that even without calling the manager of the bank in evidence to prove this letter, it could be taken into account as evidence. But before the IT authorities could rely upon it, they were found to produce it before the assessee so that the assessee could controvert the statements contained in it by asking for an opportunity to cross-examine the manager of the bank with reference to the statements made by him. Moreover, this letter was said to have been addressed by the manager of the bank to the ITO on 18th Feb., 1955, in relation to a remittance alleged to have been sent on 16th Oct., 1946, and it is impossible to believe, in the absence of any evidence to that effect, that the manager who write this letter on 18th Feb., 1955, must have been in-charge of the Madras office on 16th Oct., 1946, so as to have personal knowledge as to who remitted the amount of Rs. 1,07,350. What the manager of the bank wrote in this letter could not possibly be based on his personal knowledge and it does not appear from the letter as to what were the original documents and papers from which he gathered the information conveyed by him to the ITO. The statements contained in this letter addressed by the manager of the bank to the ITO were in the nature of hearsay evidence and could not be relied upon by the Revenue authorities. The Revenue authorities could have very well called upon the manager of the bank to produce the documents and papers on the basis of which he made the statements contained in his letter and confronted the assessee with those documents and papers but instead of doing so, the Revenue authorities chose to rely merely on the statements contained in the letter and that too, without showing the letter to the assessee. There is also one other important circumstance which deserves to be noted. It appears that when the letter dt. 9th March, 1957, was addressed by the manager of the bank to the assessee, a copy of it was forwarded by the manager to the ITO and this copy contained the following endorsement:

> "Copy to Mr. T.K. Surendran, 2nd ITO, Income-tax Office, C-IV Ward, Bombay, for information with reference to his summons dt. 5th March, 1957. One only T.T. for Rs. 1,07,350 was received with particulars as above. Mr. Nathirmal was identified by Mr. B.N. Mallaya, the then officer in our office."
>
> **6.** This copy of the letter dt. 9th March, 1957, was obviously in the record of the ITO but it was not disclosed to the assessee at any stage and, according to the ITO, it was not traceable until the case came back to him for evidence in connection with the preparation of the supplemental statement of the case…''

23. Further, he submitted that unless the material relied on by the AO is confronted to the assessee and further corroborated through examination/cross–examination, no such material can be relied on and in this case clearly the report of the sales tax officer and his inspector cannot be relied on. To that extent, the entire proceeding suffers from serious lapse of non-adherence to the established principles of law. Even a bare perusal of the report does not inspire any confidence in as much as the inspector has submitted stereo-type answers that too after enquiry from some unconnected third parties. First of all, the nature of information sought by the AO is unknown and not part of the record. When such an information was sought and why the AO inferred adversely on the assessee on 11.12.2012 even before the enquiry was caused and much before the report was received raises serious questions. Further the alleged reports talks about non-availability of these suppliers on the day the inspector visited which is on 19.12.2012 whereas the impugned transactions for which the verification was sought pertains to the period in 2005 and 2006 which is almost 7years before. Further whether the impugned sales tax authorities were provided with the bills of these suppliers is not known. A perusal of the invoices indicates

that these suppliers are all located in various parts of Solapur with pincode 413005, 413001, 413006. The addresses are located in different localities. For all these cases how the same person can be mentioned as jurisdictional sales tax officer when there are more than 20 sales tax officers in Solapur which can be found from their website. To say that the report is from jurisdictional officer would be grossly incorrect. Further the said officer seem to have conducted verification in a general fashion as can be seen from the subject mentioned in his letter as under:-

> 'Sub- CC in the case of M/S Raviprakash Refineries Pvt Ltd and M/S Anantha Refineries P. Ltd, Challakere, Karnataka'.

24. Hence this reply cannot be construed as only relevant to the case of the assessee. Moreover, it is gathered that the decision of the Tribunal deleting the addition has been accepted by the department whereas only in the case of assessee the appeal has been filed before the High Court. Such a pick and choose approach is not as per law as it amounts to discrimination as held by the Supreme Court in the case of *Union of India & Ors vs Kaumudini Narayan Dalal & Anr - 249 ITR 219* as under:-

> ''The order under challenge in this appeal by the Revenue followed the earlier judgment of the same High Court in the case of Pradip Ramanlal Sheth vs. Union of India & Ors. (1993) 113 CTR (Guj) 75 : (1993) 204 ITR 866 (Guj). Learned counsel for the Revenue states that the papers before us suggest that a special leave petition was preferred against that judgment but he has no instructions as to what happened thereafter. Learned counsel for the respondents states that their enquiries with the Registry reveal that no appeal against that judgment was preferred by the Revenue.
>
> **2.** If the Revenue did not accept the correctness of the judgment in the case of Pradip Ramanlal Sheth, (supra) it should have preferred an appeal there against and instructed

> counsel as to what the fate of that appeal was or why no appeal was filed. It is not open to the Revenue to accept that judgment in the case of the assessee in that case and challenge its correctness in the case of other assessees without just cause. For this reason, we decline to consider the correctness of the decision of the High Court in this matter and dismiss the civil appeal.''

25. Further the report also is stereotype and same thing has been repeated showing lack of interest in proper verification. The report does not anywhere mention that the sales tax registration numbers were bogus. This inference by the AO is not borne out of the report. All that the report says is these numbers were not found in Mahavikas (department site). Suffice to say that nothing adverse can be drawn against the assessee which is sustainable in law as the report is non-specific and perfunctory.

26. It was further submitted that the AO erred in coming to the conclusion that no entity by the names shown in the invoices were ever registered with them finds no support from the report submitted by the alleged sales tax authorities. Hence nothing can be held against the assessee in these reports. The material relied on by the AO through enquiries from the sales tax officer, bank manager found mentioned in the assessment order from para 3 page 6 to 64 were all obtained subsequent to the date of search and during the course of assessment proceedings. The assessment order nowhere mentions that these material were given to the assessee for its comment. Moreover, the material in page 13 to 15 of the assessment order being the alleged account opening form of M/s. Priya Commercials account held by State Bank of Mysore shows the address in page 14 at Challakere besides Solapur. If the material is supplied through Challakere

outfit then no useful purpose will be served by obtaining comment from Solapur. Further it is seen that no enquiries have been made with the local sales tax authorities with whom the assessee is assessed which would have put the things in perspective. Further the bank has done KYC while opening the account and there is also a photograph of the person who has opened the account. Whether these details were also checked or not is not known. When the payments were effected through crossed cheque which is the prescribed mode of payment, it has to be held that the assessee has complied with the requirement of law. Similar details can be found in the case of other suppliers also. The pay-in-slips mentioned in page 23 to 59 all pertains to the period between May 2006 to July 2006. These slips does not total to the entire transaction. There is nothing at all for the AY 2006-07. The AO has not looked into how the payments were effected in FY 2005-06 and also period before May 2006 and after July 2006. There is no material in the form of any verification from the Bank manager. Besides none of this material has been put to the assessee. It has been used against the assessee in the assessment order, thus leading to a serious lapse of procedure.

27. Further, the AO has not brought out any legal requirement that purchase bill must be stamped by APMC. The assessee is not aware of any such statutory requirement. Further the impugned goods purchased from the three parties are not agricultural commodities. These are oil cakes which is a residue after oil is extracted and such a manufactured commodity does not come under the purview of APMC. Hence nothing adverse can be drawn against the assessee. Further non-stamping indicates that the

transaction was done outside the APMC and cannot be inferred as bogus transaction.

28. The ld. AR submitted that the AO has not discussed this requirement in the assessment order nor has given any finding about the legal requirement of stamping the invoice by the check post. The AO is also not clear as to which authority should have stamped the invoice. Moreover, there is nothing to indicate that the AO has verified all the invoices. The allegation is vague and hence no adverse inference can be drawn. Since the goods were delivered and received at the factory premises as evidenced by the weighment slips, the requirement that it should have been stamped cannot be read as a requirement to be complied by the assessee. It may be seen that neither from APMC authorities nor from commercial tax authorities or police or forest or any other authorities have initiated or held any irregularity or illegality on the part of the assessee. It has been held by Madras High Court in *A.S.Sivan Pillai vs CIT – 34 ITR 328* as under:-

> "10….There is no presumption in favour of any illegality of a transaction. In fact, the presumption is the other way about.''

29. While the AO has alleged these transactions as bogus, he has not brought any reliable evidence in support of such allegation.

30. These documents were prepared by the assessee at the time when the goods were received at the factory premises of the assessee. These are documents supporting the trail of transaction and also establishes internal control and process which supports the case of the assessee. These documents by nature are to be prepared by the assessee as internal documents and will be self

made. These were found and seized at the time of search contemporaneously. The contents of the documents have to be presumed as true in view of section 132(4A) and 292C of the Act. Further no discrepancy of any nature has been found by the AO. Hence these documents support the genuinity of the purchases.

31. He submitted that the transactions were done at arms length supported by actual receipt of goods which has been used in the manufacture and subsequent sale. The presence of goods as mentioned in these documents is beyond doubt. The requirement in law is that payment for such purchases must be made through bank in a crossed cheque has been met. The transaction document in this case is materially no different from all other transaction which has been accepted by the department. In any case the assessee has not been called to bring any evidence other than already produced. The AO has not specified anything else that the assessee needed to submit. As stated supra when the transaction is done through crossed cheque the identity of the recipient falls into oblivion. Moreover, the AO himself has verified the bank accounts of the assessee and has not given any finding that payments were made in a manner other than permitted under the Income-tax Act. The AO has not brought any credible evidence to dispute the case of the assessee.

32. Further, the AO has mentioned that several documents purportedly obtained from the Chitradurga District Co-op Central Bank Ltd and State Bank of Mysore for the period June and July 2006. These documents purportedly are the transactions of the suppliers with these two banks. The assessee is not privy to such transactions/documents. According to the AO these were

obtained from the above two banks and impounded by the AO and in para 6.1 the AO mentions that a statement of Chief Manager of the SBM was recorded on 08.01.2013. None of these documents were ever put to the assessee as evident from the perusal of the 142(1) notices dated 26.10.2012 and 11.12.2012 (Paper book pages 12 to 19). Since the discussion and documents from page 12 to 66 was never put to the assessee these documents cannot be relied on against the assessee for making any additions. In view of this no adverse inference can be drawn on the assessee.

33. The ld. AR stated that the assessee has submitted elaborate details and documents in support of the transaction which are maintained in the normal course. The transactions are through regular banking channels. Similar transactions with others have been accepted. The documents produced by the assessee were also found at the time of search. The law as per sections 132(4A) and 292C declares these transactions as mentioned in the documents as true. Statutory presumption cannot be upset by the AO merely on the basis of surmise, suspicion and conjectures. The assessee's case cannot be adversely viewed in the absence of any material which can be relied on.

34. The ld. AR submitted that the assessee has followed all the requirements under the Income Tax Act whereas the AO has predominantly made the addition for alleged non-compliance of APMC and check post. From the forgoing discussion it is clear that the claim for expenditure is well supported and the entire claim has to be allowed. Further since the trading results of the assessee has been accepted i.e, opening stock, purchases, sales

and closing stock including the gross profit such results cannot be rejected or interfered except with a recourse to Section 145(1) of the Act. The income under the head profits and gains from income/profession has to be computed as per the books of accounts and method of accounting regularly employed by the assessee. If the AO is not satisfied with the correctness or completeness of the accounts of the assessee, the AO can reject the books and has to make an order u/s 144 of the Act. In this case no such recourse has been taken. The AO has relied on the books and has not disputed the gross profit of the assessee, both at the entity level and also at the impugned transaction level. In the absence of any allegation that the assessee has carried on the transaction either outside the books or that it has earned more profit than what is already disclosed the trading results cannot be disturbed. The addition as made by the AO if sustained completely distorts the trading results of the assessee. Moreover, the legal requirement of section 68 cannot be imputed in the case of purchases. There is not even an allegation that the price paid was in excess or unreasonable. The trading results cannot be disturbed. Since the assessee has submitted substantial documents and books of accounts in support of its claim, the onus of the assessee stands discharged. On the contrary, the AO has been in haste to declare the transaction as bogus and is unable to substantiate with cogent evidence. When the AO declares the transaction as bogus it is for him to establish that what is apparent is not real which he has failed to do so.

35. In view of the above, it was prayed that the additions may be deleted and appeals of the assessee be allowed.

36. On the other hand, the ld. DR submitted that the assessee has not produced any independent evidence to establish that the purchases are genuine, hence the burden is cast on the assessee to prove the existence of these parties, which are not proved. He relied on the orders of the lower authorities.

37. We have heard both the parties and perused the material on record with regard to additions. The AO doubted the genuineness of the transaction on the reason that the assessee could not produce the parties from whom purchases are claimed to be made. The contention of the ld. AR is that the AO never asked the assessee to produce the parties at any point of time. Hence it is incorrect for the AO to give a finding that the parties could not be produced by the assessee which is not based on any record. As such, the observations of the AO in his order are incorrect. We have gone through the various notices issued to the assessee during the course of assessment for AYs 2006-07 & 2007-08. On 26.10.2012, a notice has been issued to the assessee seeking the following information to be filed before 21.11.2012 :-

> 1. Note on business activity during the financial year 2005-06.
> 2. Memorandum and Articles of Association
> 3. Books of accounts for the period ending 31.03.2006.
> 4. Annual financial statement including notes of accounts for the year ending 31.03.2006 along with complete set of schedules.
> 5. Audit report u/s 44AB of the Act
> 6. List of bank accounts held by you during F.Y. 2005-06.
> 7. Copies of such bank accounts as mentioned in your list.

8. Evidence for expenses claimed in your P & L account.

9. List of directors and their percentage of share holding in your company.

10. Register of shares of the company giving the details of various share holders.

11. Minutes recorded during various meetings held during the financial year.

12. Details of various financial interests of your directors in other concerns/ partnership firms/ AOPs/ companies in terms of percentage and actual value as found in your records.

13. Report u/s 115JB of the Act in Form No. 29B for computing book profit.

14. Income computation statement.

38. On 11.12.2012, the AO asked the information for AY 2007-08 to be filed before him on or before 21.12.2012:-

1. Break up of the following items of expenditure in the P&L account with relevant ledgers and evidence:
   i. Operating charges
   ii. Fuel
   iii. Labour charges
   iv. Carriage inwards
   v. Freight outwards
   vi. Brokerage and commission with names of parties to whom paid and full address
2. Break up of purchases made party-wise, with ledger accounts and invoices (Sch-10)
3. Break up of raw materials in closing stock in quantity and value at cost.
4. Break up of work in progress in closing stock in quantity and value

5. Break up of finished goods in closing stock in quantity and value at cost
6. Break up of purchases party-wise, mentioned under the head variation in stock (Sch 13) party wise
7. Confirmation for loans
8. Statements mentioned in 44AB report
9. Input output ratio
10. Ledger accounts of directors holding not less than 10% of shares.

Further it is seen that your claim for purchases includes purchases stated to be made from M/s. Sree Siddeswara Commercials, M/s. Spoorthi Commercials and M/s. Priya Commercials as detailed below:

NAME of concern/ address	BST NO/ CST NO	Purchases made by M/s Anantha Refinery Pvt. Ltd during F.Y 06-07(₹)
M/s Sree Siddeswara Commercials, Prop: Y Vijaykumar/ 1609 Dattanagar (Kuchan Nagar) South Solapur, Solapur-413005	413005-S-02936/ 413005-C-01917	3,45,64,480/-
M/s Spoorthi Commercials, Prop: Sri Basavaraj/ Plot no 109, Ganesh Nagar, Bale, Solapur 413001	413001-S-03257/ 413001-C-01352	4,29,18,090/-
M/s Priya Commercials Propx: Smt Suvarna/ Jayalaxmi nagar, Shelgi Solapur- 413006	413006-S-01707/ 413006-C-01318	4,19,82,580/-
		Total- 11,94,65,150/-

On enquiries at the above given addresses and with the jurisdictional sale tax office at Solapur, it is found that the above parties were not in existence. In view of the above it is proposed to treat the above purchases as not genuine, and consider the above claim as inflation of purchases and add the above sum of Rs.9,62,97,006/- (nine crore sixty two lakh ninety seven thousand six) to your returned income. You are requested to show cause why the above addition should not be made."

39. As seen from the above, the AO never asked the assessee to produce the alleged purchasers before him. He asked only the information listed in the notice to be produced before him. As

such, there is no merit in the observations of the AO that assessee has not produced the parties before him from whom purchases are claimed to be made.

40. The AO based his conclusions on the following reasons:-

1. Enquiries made showed that the alleged suppliers were not present at the address given by them.
2. Enquiries with sales tax officers revealed that sales tax registration number shown on invoices given by the alleged suppliers were bogus.
3. Sales tax authorities have categorically stated that no entity by the names shown in the invoices ever were registered with them.
4. No details of manufacturing and trading activity carried on separately were produced to compare the input/output ratio with similar units in the industry.

41. As seen from the records, the AO raised the queries when the sales tax report containing the enquiries made came to the knowledge of the AO on 28.12.2012. The Sales Tax Officer relied upon the report of the Sales Tax Inspector who inspection was conducted on 19.12.2012. Being so, as rightly argued by the ld. AR, pre-dated query of the AO on 11.12.2012 based on the report of the Sales Tax Officer dated 28.12.2012 cannot be the basis for addition. It is only imaginary and preposterous. Being so, we do not find any merit in the objections of the AO on the above four reasons mentioned in the assessment order.

42. The next observation of the AO was that the stamps of APMC are not present in the invoices and genuineness of the transaction was not proved. The assessee purchased oil cakes which is a residue product after oil is extracted, which does not come under the purview of APMC Act and the revenue authorities

were not able to suggest any legal requirement to affix stamps of APMC on such invoices. On this ground, the AO cannot suspect the genuineness of the purchasers.

43. The next objection is that stamps of check posts are not present on the invoices. On this issue, the AO made very general remarks without verifying all the purchase bills, since the goods are delivered and received at the factory premises evidenced by weighment slips and entries in stock registers of the assessee. There is no adverse finding by the commercial tax authorities and it cannot be presumed that the purchases of the assessee are bogus.

44. The next objection of the AO is that the documents relied upon by the assessee viz., receipt for goods, weighment slips and inward slips are all self-made. These documents are prepared by the assessee only and these are invoice documents and it does not require any attestation or certification by a third party so as to prove the genuineness of the transactions. As such, the contents of the documents have to be presumed as true unless proved otherwise. Accordingly, there is no merit in the argument of the ld. DR on this issue.

45. The next objection of the AO is that there is no independent evidence to prove the purchases are made from the Solapur parties. The transactions were done supported by actual receipt of goods which has been used in the manufacture and sale subsequently. The requirement in law is that the payment for purchases is to be made through bank by a crossed cheque which has been met by the assessee. The transaction document

in this case is materially no different from all other transactions which has been accepted by the department. In any case, the assessee has not been called to bring any other evidence. The AO himself has verified the bank accounts of the assessee and has not given adverse finding that the payments were made in a manner other than under the Income-tax Act. Therefore, there is no merit in this objection of the revenue authorities.

46. The further objection of the AO is that identity of the three parties are not established. In this case, as discussed earlier, the transactions were through banking channel and payment was by cheque and similar transactions were accepted by the department and only these 3 transactions with the parties are doubted by the AO on flimsy grounds. The assessee has produced all the documents required to be filed to support the transactions and the AO has not specified anything else that the assessee has to prove further. The payment made by cheque itself establishes that the transaction is genuine. The AO himself has verified the bank account and not given any findings that the payments were made in contravention of any provisions of the Act. Being so, it is to be considered as genuine transactions only.

47. The next objection of the AO is that the assessee used at least two its own employees to operate and withdraw from the bank accounts of the suppliers. The AO has mentioned that the statements obtained from the concerned banks were impounded and the statement of Chief Manager of SBM was recorded on 8.1.2013. However, none of these documents were put to the assessee and it cannot be relied on against the assessee for making any addition. Hence, no adverse inference can be drawn.

48. In view of the above, we are inclined to hold that these purchases in these assessment years cannot be considered as bogus and delete the additions accordingly.

49. The other ground is with regard to interest u/s. 234A & 234B of the Act which is consequential and mandatory.

50. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the open court on 29th April, 2022

Sd/-	Sd/-
(BEENA PILLAI)	(CHANDRA POOJARI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Bangalore,
Dated: 29th April, 2022

TNMM //Desai S Murthy /

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A)-VI*
4. *The CIT*
5. *The DR, ITAT, Bangalore.*

By Order

Assistant Registrar
ITAT, Bangalore.