

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No. 6593/Del/2014
(for Assessment Year : 2010-11)

ITO Ward – 23(3), New Delhi PAN No. AAICS 2507 F (APPELLANT)	Vs.	M/s. Shree Bihari Forgings Pvt. Ltd. 6, Navyug Market Ghaziabad, U.P. (RESPONDENT)
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Assessee by	--None--
Revenue by	Shri H. K. Chaudhary, CIT(DR)

Date of hearing:	10.05.2022
Date of Pronouncement:	23.05.2022

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the Revenue is directed against the order dated 05.09.2014 of the Commissioner of Income Tax (Appeals)-XI, New Delhi relating to Assessment Year 2010-11.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company stated to be engaged in the business of manufacturing of M. S. Ingots. Assessee filed its return of

income for A.Y. 2010-11 on 15.10.2010 declaring total income at Rs.13,16,281/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 25.03.2013 and the total income was determined at Rs.14,42,32,556/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 05.09.2014 in Appeal No,7/13-14 granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

- “1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in restricting the addition to Rs.1,46,46,619/- as against Rs.13,50,00,000/- made by the AO on account of bogus purchases.*
- 2. The appellant craves to amend, modify, alter or forgo any ground(s) of appeal at any time before or during the hearing of this appeal.”*
4. The case file of the appeal reveals that the appeal was filed by the Revenue. The matter was fixed for hearing for the first time on 28.10.2017. On that day, there was no appearance on behalf of the assessee nor any adjournment application was filed on its behalf. The matter was therefore adjourned for hearing for 27.12.2017 and the notice was issued through registered post. It is seen that thereafter the case for hearing was fixed on various dates and the notice for hearing was also issued but on all those dates there was no appearance on behalf of the assessee nor any adjournment application was moved on its behalf. The details of the dates when the matter was listed for hearing but was

adjourned on account of non appearance by assessee is tabulated hereunder:

1.	28.10.2017	-	matter was adjourned to 27.12.2017
2.	27.12.2017	-	matter was adjourned to 13.03.2018
3.	13.03.2018	-	matter was adjourned to 17.05.2018
4.	17.05.2018	-	matter was adjourned as Bench was not functioning to 09.08.2018
5.	01.11.2018	-	matter was adjourned to 16.01.2019
6.	16.01.2019	-	matter was adjourned as Bench was not functioning to 20.03.2019
7.	20.03.2019	-	matter was adjourned as Bench was not functioning to 28.05.2019
8.	29.08.2019	-	matter was adjourned to 14.11.2019
9.	14.11.2019	-	matter was adjourned to 22.01.2020
10.	22.01.2020	-	matter was adjourned to 19.03.2020
11.	19.03.2020	-	matter was adjourned to 25.05.2020
12.	25.05.2020	-	matter was adjourned as Bench was not functioning to 30.07.2020
13.	30.07.2020	-	matter was adjourned as Bench was not functioning to 12.10.2020
14.	12.10.2020	-	matter was adjourned to 24.11.2020
15.	24.11.2020	-	matter was adjourned to 08.02.2021
16.	08.02.2021	-	matter was adjourned to 15.04.2021
17.	15.04.2021	-	matter was adjourned to 24.06.2021
18.	24.06.2021	-	matter was adjourned to 13.09.2021
19.	13.09.2021	-	matter was adjourned to 24.11.2021
20.	24.11.2021	-	matter was adjourned to 15.02.2022
21.	15.02.2022	-	matter was adjourned to 10.05.2022

5. On the present date also, there is no appearance from the side of assessee nor there is any request for adjournment. In such a situation and considering the fact that the appeal has been filed in 2017 and there has been no appearance on behalf of the assessee in the past, we proceed to dispose of the appeal *ex parte qua* the assessee and after hearing the Learned DR.

6. AO vide para 3 of his order noted that the premises of the assessee was searched/investigated by Commercial Tax Department of UP Govt. on 18.02.2010 and by Central Excise Department on 25.02.2010. He has noted that vide order of the Commercial Tax Department dated 03.05.2012, it was noted that assessee had made unaccounted purchases of raw material amounting to Rs.13,50,00,000/- and unaccounted sales of Rs.13,50,00,000/-. He noted that the source of funds from which unaccounted purchase was made has not explained by the Assessee. He therefore made addition of Rs.13.50 crores to the income on account of unaccounted purchases. With respect to the findings of Commercial Tax Department regarding unaccounted sales of Rs.15 crores, he noted that the percentage of gross profit of the assessee works out to 4.22%. He therefore worked out the gross profit on such unaccounted sales at Rs.63,30,000/- and made its addition.

7. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) granted partial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

8. Before us, Learned DR pointed to the findings of CIT(A) at Para 8.1.1 of the order. From that para he submitted that initially the addition was made by the AO based on the order dated 03.05.2012 passed by the Commercial Tax Department. He further submitted that CIT(A) had granted relief to the assessee

for the reason that the aforesaid order of Commercial Tax Department was set aside by Additional Commissioner of Commercial Tax (Appeals) on 11.03.2013 for re-adjudication by the AO. He thereafter pointed to the findings noted by the CIT(A) that the aforesaid order of Additional Commissioner of Commercial Tax (Appeals) has been set aside by the Additional Commissioner of Commercial Tax (Appeals), vide order dated 26.06.2014 and had restored the matter back to the file of the Assessing Officer of Commercial Tax Department. He therefore submitted that the matter may be remitted back to AO with the directions to decide the matter in the light of the final order passed by the Assessing Officer of Commercial Tax Department consequent to the directions of Additional Commissioner of Commercial Tax (Appeals).

9. We have heard the Learned DR and perused the material available on record. The issue in the present ground is with respect to the addition made on account of unaccounted purchase and sales. We find that CIT(A) while deleting the addition has noted that the original order of the Commercial Tax Department which was the basis of the addition made by AO was set aside by Additional Commissioner of Commercial Tax (Appeals) vide order dated 26.06.2014. Additional Commissioner of Commercial Tax (Appeals) had restored the matter back to the file of Assessing Officer of Commercial Tax Department. Before us, none of the sides have placed the final order passed in pursuant to the direction of Additional Commissioner of

Commercial Tax (Appeals) dated 26.06.2014. In such a situation, we are of the view that the matter needs to be relooked in the light of the final order passed by Assessing Officer of Commercial Tax Department consequent to the directions of Additional Commissioner of Commercial Tax (Appeals) dated 26.06.2014. We, therefore, restore the issue back to the file of CIT(A) to decide the issue afresh after considering the final order passed by Assessing Officer of Commercial Tax Department. **Thus the ground of appeal is allowed.**

9. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 23.05.2022

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

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

Date:- 23.05.2022
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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI