

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.196/Del/2021**

**[Assessment Year : 2007-08]**

Babulal Khandelwal, 5888/3, Basti Harphool Singh, Sadar Bazaar, New Delhi-110006. <b>PAN-AAHPK6455G</b>	vs	ITO, Ward-63(3), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Ved Jain, Adv.	
<b>Respondent by</b>	Shri Om Prakash, Sr.DR	
<b>Date of Hearing</b>	10.06.2022	
<b>Date of Pronouncement</b>	24.06.2022	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the assessee for the assessment year 2007-08 is directed against the order of Ld. CIT(A)-18, New Delhi dated 11.08.2020.

2. The assessee has raised following grounds of appeal:-

1. *“On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eyes of law and on facts.*
2. *On the facts and circumstances of the case, learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the initiation of the reassessment proceedings and the reassessment order are bad, both on the facts and in law and liable to be quashed, as the statutory conditions and procedure prescribed under the statute have not been complied with.*
3. *On the facts and circumstances of the case, learned CIT(A) has erred, both on facts and in law in ignoring the contention of the assessee that the reopening of the assessment proceedings of AY 2007-08 has been made on the basis of reopening of assessment*

*proceedings of the AY 2006-07, which has been quashed by Hon'ble ITAT*

4. (i) *On the facts and circumstances of the case, learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the reassessment proceedings initiated by the AO are bad in the eyes of law, as the reasons recorded for the issue of notice under section 148 are bad in the eyes of law and are contrary to the facts.*
- (ii) *On the facts and circumstances of the case, learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the reassessment order passed by the AO is bad and liable to be quashed as the same has been reopened on the basis of the reasons which are vague and have been recorded without application of mind on the part of the AO.*
5. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs. 4,90,292/- on account of purchases made by the assessee treating the same as bogus invoking section 69C of the Income Tax Act.*
- (ii) *That the abovesaid addition has been confirmed at the arbitrary rate of 25% of the total purchases without there being any basis of the same.*
6. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming that the firms from which purchases had been made are not engaged in actual business, ignoring the fact that during the course of search on these firms substantial inventory in respect of the material being purchased by the assessee was found, which confirms the fact that these firms were doing actual business.*
- (ii) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting that the inference*

*drawn by the AO merely on the basis of a statement that these firms are not in actual business is baseless and contrary to the facts on record.*

7. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee in ignoring the fact that the quantity purchased and sold being completely tallying, the allegation that the assessee has not made purchases cannot be sustained.*
8. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the addition on account of bogus purchases, despite their being adequate material and evidences brought on record by the assessee before the AO to show that the purchases and sales were made in the regular course of business.*
9. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the addition so made on the basis of material collected at the back of the assessee, is bad in law and liable to be deleted.*
10. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the addition made by the AO is untenable in the eyes of law, having been made without providing opportunity to cross examine the person on the basis of whose statement the allegations have been made against the assessee and without following the principles of natural justice.*
11. *The appellant craves the leave to add, amend or alter any of the grounds of appeal.”*

## **FACTS OF THE CASE**

3. Facts giving rise to the present appeal are that in this case, income tax return was filed on 29.10.2007 declaring total income of Rs.1,57,099/-. The case of the assessee was re-opened and notice was issued and served upon to the assessee. In response to the notice, Ld. Authorized representative appeared on behalf of the assessee. While framing the assessment u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (“the Act”), the Assessing Officer (‘AO’) made addition of Rs. 19,61,168/- on account of bogus purchases made from M/s. Shree Bankey Bihari Trading Company; Shree Shyam Trading Company and Om Agencies.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions and perusing the material available on record, partly allowed the appeal. Thereby, the Ld. CIT(A) sustained 20% of the additions and rest was deleted.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Ld. Counsel for the assessee reiterated the submissions made in the synopsis. The relevant contents of the synopsis are reproduced hereunder:-

1. *“This is an appeal filed by assessee against the order passed by the learned CIT(A) whereby he has upheld the action of the Assessing Officer in reopening the assessment under section 148 of the Act and on merit has confirmed of Rs. 4,90,292/- at the rate of 25% of the total addition of Rs. 19,61,168/- made by the AO on account of purchases made by assessee from M/s Shree Bankey Bihari Trading Co, Shree Shyam Trading Co. & Om Agencies.*

2. *At the very outset, it is submitted that the case of Assessee Company is squarely covered by the order of this Hon'ble Tribunal in assessee's own case for A.Y. 2006-07 in ITA No. 1367/Del/2015 dated 30.08.2017 whereby the Hon'ble Tribunal has quashed the reassessment proceedings initiated by the AO and has also deleted the impugned addition made by the AO on the merits of the case. The findings of the Hon'ble Tribunal in the case of A.Y. 2006-07 with regard to the reopening of the case are at Page 14 in Para 10 (enclosed at PB 114 ) and with regard to the merits of the case are at Page 15-16 in Para 12 (enclosed at PB 115-116).*
3. *It is submitted that similar cases have also been heard before this Hon'ble Tribunal involving verbatim reasons, similar arguments and similar findings. These cases are also being relied upon, which are as under:*
- *Unique Metal Industries v. ITO in ITA No. 1372/Del/2015 dated 28.10.2015*
  - *M/s Radhay Shyam and Co. vs ITO in ITA No. 1429/Del/2015 dated 30.11.2015 before SMC-1 Bench.*
  - *M/s Kishan Lai Gambhir & Sons v. ITO in ITA No.1516/Del/2015 dated 02.12.2015 before 'F' Bench.*
  - *M/s Kakkar Bartan Store v. ITO in ITA No. 1380/Del/2015 dated 23.03.2016*
  - *M/s Krishan Lal & Sons v. ITO in ITA No. 1379/Del/2015 dated 23.03.2016*
  - *M/s Laxmi Dhatu Bhandar v. ITO in ITA No. 1369/Del/2015 dated 23.03.2016*
  - *M/s Karshni Metal Store v. ITO in ITA No. 1365/Del/2015 dated 23.03.2016*
  - *M/s Kashmir Metals v. ITO in ITA No. 1366/Del/2015 dated 23.03.2016*

- *M/s Bhardwaj Metal (India) v. ITO in ITA No. 1370/Del/2015 dated 23.03.2016*
- *M/s Nayar Metal Co. v. ITO in ITA No. 1374/Del/2015 dated 31/03/2016*
- *Neeraj Rathore Prop. M/s Anjli Metal Overseas and Rajiv Jain Prop. M/s Rajeev Metal Trading Co. v. ITO in ITA No. 059/Del/2017 and ITA No.7061/Del/2017 dated 27.09.2018*
- *Jyoti Engineering Works, Sadhna Sharma, Ajay Sharma v. ITO in ITA No. 2719/Del/2018, ITA No. 2720/Del/2018, ITA No. 2721/Del/2018, ITA No. 2722/Del/2018 And ITA No. 2723/Del/2018 dated 26.09.2018*
- *Rajender Prasad Prop. M/s Priya Enterprises v. ITO in ITA No.7060/DEL/2017 dated 07.09.2018*
- *M/s Sapra Metal Co. v. ITO in ITA No. 2910/Del/2016 dated 09.3.2017*

4. *Therefore, in view of the above, the addition made by the Ld. AO and sustained by the Ld. CIT(A) is liable to be deleted.”*

7. Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

8. I have heard the contentions of the Ld. Authorized representatives of the parties and perused the material available on record and gone through the orders of the authorities below. At the outset, Ld. Counsel for the assessee pointed out that the Division Bench of this Tribunal in ITA No.1367/Del/2015 pertaining to AY 2006-07 vide order dated 30.08.2017, has allowed the appeal of the assessee both on legal issue and on merit of the case. He contended that the facts are identical and there is no change into the facts and circumstances of the case. He therefore, contended that issues raised in this appeal are

squarely covered in favour of the assessee by the decision of the Division Bench of the Tribunal in ITA No.1367/Del/2015 (Supra).

9. Ld. Sr. DR opposed these submissions and strongly supported the orders of the authorities below.

10. I have heard the rival contentions of the parties. I find merit into the contention of Ld. Counsel for the assessee that the identical issues were raised by the assessee in ITA No.1367/Del/2015 for AY 2006-07 and Division Bench of this Tribunal in para Nos.10 to 12 has decided the issue in favour of the assessee. For the sake of clarity, para Nos. 10 to 12 of the aforesaid order reproduced as under:-

10. *“On careful consideration and vigilant perusal of the orders of the Tribunal including that of the Unique Metal Industries (supra), we observe that the AO had recorded similarly worded reasons and name of the parties from whom the assessee alleged to have made bogus purchases were also same except the amount mentioned therein in the reasons recorded in the tabular form, as in the case of the present assessee. We, therefore, respectfully following the above decisions of the Tribunal in the case of Unique Metal Industries (supra), hold that the initiation of reassessment proceedings as well as issuance of notice u/s 148 of the Act was not valid and the same was void ab initio and thus, liable to be quashed along with assessment order passed in pursuance thereto. Accordingly, Ground Nos. 2 and 3 of the assessee are allowed.*

11. *Now coming to the merit about the sustenance of the addition by the CIT(A) @ 20% of the purchases made by the assessee from M/s Vishu Trading Company, & M/s Om Agencies., after hearing the rival submissions and going through the order of the Tribunal, we note that this Tribunal vide its order dated 28.10.2015 in the case of*

*Unique Metal Industries (supra), deleted similar addition by observing in para 27 as under:*

*“27. As regards the addition of 20% sustained by the ld. CIT(A) I am of the view that since purchases are not bogus the addition on this account cannot be sustained. Even otherwise the addition of 20% on the facts and circumstances is apparently too high. The ld. CIT(A) having held that tax has to be levied on real income and the profit cannot be ascertained without deducting the cost of purchases from the sales as otherwise it amount to levy of tax on gross receipt, she ought to have applied’ profit rate in this nature of trade. Estimating profit @ 20% by taking into consideration the or visions of section 40A(3) will not lead to determination of correct real income. Section 40A(3) is meant for a different purpose when the assessee has made purchases in cash. This provision cannot be applied in such cases. Once the purchases are held to be bogus then the trading results declared by the assessee cannot be accepted and right course in such case is to reject books of accounts and profit has to be estimated by applying a comparative profit rate in the same trade. Though there can be a little guess work in estimating profit rate but such profit rate cannot be punitive.”*

- 12. The ld. DR could not bring to our notice any cogent or relevant material or evidence which may lead us to take a different view and not to follow the decision of the co ordinate benches of the Tribunal in the case of Unique Metal Industries (supra) and other relevant orders. We, therefore, respectfully following the decision of the Tribunal in the case of Unique Metal Industries (supra), whereby the addition of 20% of the purchases sustained by the ld. CIT(A) has been deleted in the identical facts and circumstances of the case, are not inclined to sustain the similar addition in the instant case. Consequently, the grounds of the assessee on merits are also found*

*covered in favour of assessee by the aforesaid decision and are accordingly allowed.”*

11. The facts are identical and similar grounds have been raised by the assessee in the appeal for AY 2007-08. The Revenue has not brought to my notice any other binding precedent. Therefore, respectfully flowing the decision of the Division Bench rendered in ITA No.1367/Del/2015 for AY 2006-07. I hereby, direct the AO to delete the impugned addition. Thus, grounds raised by the assessee in this appeal are allowed.

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

Order pronounced in the open Court on 24<sup>th</sup> June, 2022.

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI