

**IN THE INCOME TAX APPELLATE TRIBUNAL  
 DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
 SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 5851/DEL/2018 (A.Y 2015-16)**

K. R. Pulp & Papers Ltd., 304, Roots Tower, Distt. Centre, Laxmi Nagar, Delhi – 110 092.  <b>PAN No. AAACK5861C</b>	Vs.	ACIT, Central Circle : 19, New Delhi.
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**I.T.A. No. 6928/Del/2018 (A.Y. 2015-16)**

ACIT, Central Circle : 19, New Delhi.  <b>(APPELLANTS)</b>	Vs.	K. R. Pulp & Papers Ltd., 304, Roots Tower, Distt. Centre, Laxmi Nagar, Delhi – 110 092.  <b>PAN No. AAACK5861C</b>  <b>(RESPONDENTS)</b>
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**AND**

**I.T.A No. 6929/DEL/2018 (A.Y. 2016-17)**

ACIT, Central Circle : 19, New Delhi.  <b>(APPELLANTS)</b>	Vs.	K. R. Pulp & Papers Ltd., 304, Roots Tower, Distt. Centre, Laxmi Nagar, Delhi – 110 092.  <b>PAN No. AAACK5861C</b>  <b>(RESPONDENTS)</b>
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<b>Assessee by :</b>	<b>Ms.Monika Aggarwal, Advocate; &amp; Shri Lalit Mohan, Advocate</b>
<b>Department by:</b>	<b>Shri Surender Pal, [CIT] – D.R.;</b>

<b>Date of Hearing</b>	<b>15.06.2022</b>
<b>Date of Pronouncement</b>	<b>12 .07.2022</b>

**ORDER**

**PER YOGESH KUMAR U.S., JM**

These cross appeals are filed by the assessee and the Revenue against the orders dated 06/08/2018 & 01/08/2018 passed by Ld.CIT(A)-27 for Assessment Years 2015-16 and 2016-17 respectively.

**2. I.T.A. No. 5851/DEL/2018 (A.Y 2015-16) :**

The assessee has raised the following ground of appeal:-

*“1. That the learned Commissioner of Income Tax (Appeals) - 27, New Delhi has erred both in law and on facts in sustaining an addition of Rs.81,70,824/- representing alleged bogus purchases made from Flourish Paper & Chemicals Ltd by the appellant company.*

*1.1 That while sustaining the aforesaid addition the learned Commissioner of Income Tax (Appeals) -27, New Delhi has overlooked the factual matrix of the appellant company, statutory provisions of law and explanation/evidence placed on record and*

*hence untenable.*

*1.2 That once the books of accounts stood accepted which are duly audited and purchases are recorded in books of accounts for which receipt of goods is not in dispute and payment has been made through banking channels, the addition sustained perse is illegal invalid and untenable, particularly when identical claim stood accepted in preceding and succeeding assessment years.*

*1.3 That once the sales are not disputed and quantitative tally stands furnished and accepted disallowance sustained otherwise too is invalid.*

*1.4 That various adverse findings and conclusions recorded in the impugned order are factually incorrect, contrary to evidence on record and overlook the replies furnished by the appellant and hence untenable.*

*1.5 That the learned Commissioner of Income Tax (Appeals)-27, New Delhi has erred both in law and on facts in observing that "However, the perusal of all these details reveal that they have been filed by appellant along with covering letter dated 26.12.2017 (mentioned in handwriting) but got submitted on 27 Dec 2018 in the office of Deputy / Assistant Commissioner of Income Tax Circle -19, New Delhi. Thus, the appellant is relying on the evidence / details filed by it on future date and claiming the genuineness of purchases. Clearly, either the appellant has manipulated the evidence or did not file it deliberately before AO for further examinations. In such situation, these details / evidence filed by appellant cannot be*

*considered during the appellate proceedings. ” The finding is erroneous; as much as the letter dated 26.12.2017 was filed by the creditor which was acknowledged by the revenue with stamp having the date 27.12.2018.*

*Learned Commissioner of Income tax (Appeals), has failed to appreciate and acknowledgement date as per letter has to be read as 27.12.2017 not 27.12.2018 and therefore the addition sustained is based on misconception and hence illegal.*

1.6 *That in any case and without prejudice the learned Commissioner of Income Tax (Appeals) ought to have admitted the evidences filed alongwith application under Rule 46A of the Rules, and as such confirmation of addition of Rs. 81,70,824/- is highly unjustified and not tenable, particularly when the date of assessment order and date of hearing before him was prior to 28.12.2018.*

2. *Without prejudice even assuming that purchases are treated as non genuine purchase then too disallowance had to be restricted up to the rate of gross profit i.e. 16.08% on such purchases and no more and thus disallowance sustained to the extent of 25% of alleged bogus purchases in any case, is excessive.*

3. *That the learned Commissioner of Income Tax (Appeals)-27, New Delhi has erred both in law and on facts in upholding the initiation of proceedings u/s 153A of the Act and, framing of assessment u/s 153A/143(3) of the Act since no incriminating material was found as a result of search conducted on the appellant and therefore, both the notice issued and, assessment framed were*

*without jurisdiction and, deserved to be quashed as such.*

3.1 *That addition upheld are without jurisdiction since it is not based on any material found as a result of search on the appellant, as have been also held by the judgments of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla reported in 380 ITR 573 and Pr. CIT vs. Meeta Gutgutia reported in 395 ITR 526.*

3.2 *That the learned Commissioner of Income Tax (Appeals)-27, New Dehi, has failed to comprehend that when no notice u/s 143(2) of the Act has been issued and served prior to search on 08.07.2015 u/s 132(1) of the Act, the provision of section 153A of the Act could not be applied in a case where no incriminating evidence or material had been found in search, the additions made were beyond the scope of section 153 A of the Act.*

4. *That learned Commissioner of Income Tax (Appeals) -27, New Delhi, has erred both in law and on facts in not disposing off the ground of appeal raised by appellant that approval obtained u/s 153D of the Act was a mechanical and, invalid approval having been granted without due application of mind to the facts of the assessee company, and therefore order of assessment made u/s 153 A/143(3) is invalid and not in accordance with law.*

5. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the levy of interest of Rs. 5,30,205/- u/s 234A of the Act and of Rs. 34,99,353/- u/s 234B of the Act which are not leviable on the facts and circumstances of the case of the appellant.*

*It is therefore, prayed that it be held that order framed is without jurisdiction and deserves to be quashed as such. It be further held that additions so made and upheld by the learned Commissioner of Income Tax (Appeals) along with interest levied be deleted and appeal of the appellant be allowed. “*

**3. I.T.A. No. 6928/DEL/2018 (A.Y. 2015-16) :**

The Revenue has raised the following ground of appeal:-

*“1. The Ld. CIT(A) has erred in law and on facts in restricting the addition on account of bogus purchase to the extent of 25% and deleting the addition of Rs.2,45,12,472/- on this account, even after the fact that the ld. CIT(A) has admitted the total amount of Rs.3,26,83,296/- as bogus and unexplained purchase.*

*2. (a) The order of the CIT(Appeals) is erroneous and not tenable in law and on facts.*

*(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal. “*

**4. I.T.A. No. 6929/DEL/2018 (A.Y. 2016-17) :**

The Revenue has raised the following ground of appeal:-

*“1. The Ld. CIT(A) has erred in law and on facts in deleting the addition on account of unexplained cash of Rs.2,33,35,00/-, Rs.24,80,579/- & Rs.25,79,746/- totaling to Rs.2,83,95,325/-.*

2. (a) *The order of the CIT(Appeals) is erroneous and not tenable in law and on facts.*

(b) *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal. “*

5. **I.T.A. No. 5851/DEL/2018 (A.Y 2015-16) :**

Brief facts of the case are that, the assessee Company has engaged in the business of manufacturing and taking of Kraft paper and white paper. Search & seizure, and survey operations under section 132/133A of the Income Tax Act, 1961 were conducted on 08.07.2015 and subsequent date in the case of assessee along with the other cases of the KR Pulp and Papers Ltd, Group at various residential & business premises.

6. The Assessment proceedings has been initiated against the Assessee and the Ld. A.O. observed that, the assessee has failed to produce bills/vouchers for purchase verification and in the absence of satisfactory replies/documentary evidences, purchase/expenditure to the extent of Rs. 3,26,83,296/- has been treated as bogus, accordingly the addition of Rs. 3,26,83,296/- has been made in the assessment order dated 29/12/2012.

7. As against the assessment order dated 29/12/2017, the assessee has preferred an appeal before the CIT(A). The Ld.CIT(A) vide order dated 06/08/2018 partly allowed the appeal on 06-08-2018, by deleting the addition of Rs. 2,45,12,472/-, however, sustained the addition of Rs. 81,70,824/- in respect of the purchases made from M/s Flourish Paper and Chemical Ltd. by the assessee.

8. As against the order dated 06/08/2018, the Assessee has preferred the present Appeal in ITA No. 5851/Del/2018 on the grounds mentioned above.

9. Ld. Counsel for the assessee submitted that, the assessee has produced the documents before the A.O to substantiate the claim of the assessee for purchase verification along with a covering letter dated 27/12/2017, much before passing of the Assessments order but the date of acknowledgement was wrongly mentioned as 27/12/2018 and the same has been reproduced once again before the appeal proceedings before the CIT (A), but the Ld. CIT(A) has not considered the same and rejected to admit those documents.

10. We have heard the parties, perused the metirials on record and gave our thoughtful consideration.

11. The Ld. A.O made addition which has been partially sustained by the CIT(A) on the ground that, the assessee has failed to produce any satisfactory reply/documentary evidence, in respect of purchase made by M/s Flourish Paper and Chemical Ltd. and both the authorities bellow have not examined the documents produced along with the covering letter dated 26/12/2017. In view of the facts and circumstances of the case, we incline to remand the matter to the file of CIT (A) with a direction to examine the documents produced by the Assessee along with covering letter dated 26/12/2017 and decide the Appeal afresh in accordance with Law.

12. Accordingly, we allow the grounds of Appeal No. 1.6 for statistical purpose by setting aside the matter to the file of CIT(A) to dispose of the matter in accordance with law after hearing the assessee and also admitting the additional evidence. Since we have remanded the matter to the CIT (A) to disposes of the Appeal on merit, other grounds urged by the Assessee need not be decided by us.

**13. ITA No. 6929/Del/2018 (AY 2015-16)**

The main grievance of the Revenue in the instant Appeal is on restricting the addition made by the AO on account of bogus purchase to the extent of 25% and deleting the addition of Rs. 2,45,12,475/-. The Ld. DR submitted that, the CIT(A) has specifically observed that the entire transaction to the tune of Rs. 3,26,83,296/- was bogus, but erroneously deleted the addition of Rs. 2,45,12,475/-, which is illegal. By relying on the order of the A.O. the Ld. DR has sought for interference from the Tribunal.

14. Per contra, the Ld. Counsel for the assessee submitted that, the Ld. CIT (A) is right in deleting the addition and restricting to the 25% of total sale. Further submitted that, those sales are not at all bogus. The Assessee has produced the documents before the A.O to substantiate the claim of the assessee for purchase verification along with a covering letter dated 27/12/2017, much before passing of the Assessments order, but the date of acknowledgement was wrongly mentioned as 27/12/2018 and the same has been reproduced once again before the appeal proceedings before the CIT (A), but the Ld. CIT(A) has not considered the same and rejected to admit those documents.

15. We have heard the parties, perused the metirials on record and gave our thoughtful consideration.

16. The Addition made by the A.O, as well partially sustained by the CIT(A) on the ground that, the assessee has failed to produce any satisfactory reply/documentary evidence, in respect of purchase made by M/s Flourish Paper and Chemical Ltd. and both the authorities bellow have not examined the documents produced along with the covering letter dated 26/12/2017. Further the CIT (A) by specifically observing that the entire sale to the tune of

Rs. 3,26,83,296/- as bogus, but proceeded to restrict the addition only to the 25% of the bogus sale without looking into the documents produced by the Assessee. Further while restricting the addition to 25% of the bogus sale the Ld. CIT (A) has not has not determined and GP during year, netting of GP on these transaction is not been taken in to consideration. Further we have already remanded the matter to the file of CIT(A) in Assessee's Appeal in ITA No. 5851/Del2018 (AY 2015-15) for fresh adjudication.

17. In view of the above, we deem it fit to remand the issue involved in the present Appeal to the file of CIT (A) for fresh adjudication with a direction to verify the documents filed by the Assessee along with the covering letter dated 25/12/2017 and decide the Appeal afresh accordance with law. Accordingly we allow the Grounds of Appeal for statistical purpose.

**18. ITA No. 6929/Del/2018 (AY 2016-17)**

The main grievance of the Revenue in the above appeal is on deleting the addition on account of unexplained cash of Rs. 2,33,35,00/-, Rs. 24,80,579/- and Rs. 25,79,746/- totaling to Rs. 2,83,95,325/-. The Ld. DR submitted that the CIT(A) has committed grave error in deleting the addition made by the A.O and by relying on the order of the A.O. The Ld. DR has sought for interference from the Tribunal.

19. Per contra, the Ld. Counsel for the assessee submitted that the Ld.CIT(A) while dealing with the issue elaborately discussed the source of the cash of each parties and came to the just conclusion. The Ld. Counsel for the assessee further submitted that the source of the cash has been explained by the assessee and no additions have been made to any of those parties. Therefore, justified the order of the CIT(A).

20. We have heard the parties, verified the material on record. The Ld.CIT(A) while deciding the Appeal, has examined the documents on record for the sources of the cash found at three different premises and came to the conclusion.

21. The source of cash amounting to Rs. 1,89,97,837/- found at the premises at Kashi Villa, Shahjahanpur, has been explained from the sale of cylinders by the group company namely M/s KMS Associate Pvt. Ltd. The relevant details as such VAT returns, VAT Challans, entries of cash books, disclosure made in the balance sheet have been neither been rejected by A.O nor any adverse comments have been given in this regard. Further, the balance amount of Rs. 43,37,163/- has been explained by the assessee during the assessment proceedings that, it belongs to other entities and had shown in their cash book. During the Appeal proceedings, the assessee has also filed copies of statement of affair, ITR, computation of income and assessment order of Sh. Gopal Agarwal, Sh. Madho Gopal Agarwal ad Sh. Raj Gopal Agarwal claiming that they have sufficient cash balance of Rs. 20,43,440/-, Rs.20,24,738/- and 20,18,106/- respectfully. Further, very same AO has completed the Assessment proceedings and accepted the aforesaid cash balances in the hands of respective persons.

22. In respect of the cash amount of Rs. 41,45,800/- found at the factory premises Jalalabad Road, Shahjahanpur, the assessee has explained that, the said cash from the accounts of sister concern Companies i.e. KMS Associates Pvt. Ltd., KMS Developers Pvt. Ltd. and M/s Muirli Agritech Pvt. Ltd. During the appellate proceedings before the CIT(A), the assessee has submitted the relevant details and documentary evidence such as copies of the ledger

accounts and cash book along with balance sheet reflecting the cash balances which were filed during the assessment proceedings, which has been examined by the CIT (A) and found that respective entities were having sufficient cash balance in their hands, which was reflected in their balance sheets, which has been also accepted by the AO while making assessment u/s. 153A of the Act in the year under consideration.

23. Similarly in respect of cash amount to Rs. 28,30,860/- found in the office premises of the assessee company and sister concern at Laxmi Nagar Delhi, it was been explained that, the said cash is belongs to sister concerns namely M/s Madan Electronics Pvt. Ltd. M/s and MRS Mercantile Pvt. Ltd. along with other entities and family members of the group having cash in their book. The assessee has produced the relevant details during the assessment proceedings and also before the CIT (A). The AO himself has accepted and authenticated the cash balances during the search proceedings at the business premises at Lakshmi Nagar Delhi. Therefore the CIT (A) has rightly held that said amount as explained and deleted the addition made by the AO.

24. In our opinion the Ld.CIT(A) has meticulously verified the Documents and also elaborately discussed case on merit while finding the facts and in deleting the addition made by the AO. Thus we find no infirmity or error in the order of the CIT(A). Accordingly, we confirm the order of the CIT(A) by dismissing the Revenue's grounds of Appeal.

**25. In the result, the appeal filed by the assessee in ITA No. 5851/Del/2018(AY 2015-16) is allowed for statistical purpose, Appeal filed by the Revenue in ITA No. 6928/Del/2018(AY 2015-16) is also allowed for statistical purpose. Appeal filed by the Revenue in ITA No. 6929/Del/2018(AY 2016-17) is dismissed.**

Order pronounced in the open court on : **12/07/2022.**

**Sd/-**  
**( N. K. BILLAIYA )**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Dated : 12/07/2022

*\*R.N\**

Copy forwarded to :

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI