

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1207/AHD/2017
निर्धारण वर्ष/Asstt. Year: 2012-2013

Ashok Mohanlal Jain, Prop of Parshwanth Enterprise, S/3, Sujata Flats, Camp Road, Sahibaug, Ahmedabad-380004. PAN: ACZPJ7617B	Vs.	I.T.O, Ward-1(3)(1), Ahmedabad.
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And

आयकर अपील सं./ITA No. 1340/AHD/2017
निर्धारण वर्ष/Asstt. Year: 2012-2013

I.T.O, Ward-1(3)(1), Ahmedabad.	Vs.	Ashok Mohanlal Jain, Prop of Parshwanth Enterprise, S/3, Sujata Flats, Camp Road, Sahibaug, Ahmedabad-380004. PAN: ACZPJ7617B
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(Applicant)		(Respondent)
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Assessee by :	Shri Chetan L. Agrawal, A.R
Revenue by :	Shri V.K. Singh, Sr.D.R

सुनवाई की तारीख / **Date of Hearing** : 22/06/2022
घोषणा की तारीख / **Date of Pronouncement**: 10/08/2022

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned cross appeals have been filed at the instance of the Assessee and the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-1, Ahmedabad, dated 17/03/2017 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-2013.

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

1. *The Ld.CIT(A) erred on facts and in law in confirming unpaid creditors amounting to Rs.5,59,57,173/- in confirming unpaid creditors amounting to Rs.5,59,57,173/- holding the same to be bogus purchase when entire sales and closing stock disclosed in audited accounts has been accepted without rejection of books results.*

The appellant craves permission to add, alter, amend or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.

3. The only issue raised by the assessee is that the learned CIT(A) erred in sustaining the addition of Rs. 5,59,57,173/- on account of bogus purchases.

4. The assessee is an individual and engaged in the business of trading of cloth and hosiery. There were 16 sundry creditors having outstanding balance aggregating to Rs. 8,64,90,487/- in the balance sheet of the assessee as on 31-3-2012. During the assessment proceeding, the AO required the assessee to furnish contra ledger confirmation, purchase register and other supporting documents. But assessee failed to produce the same. Likewise, AO issued notices under section 133(6) to the parties whose details of PAN and address were available. However, no satisfactory reply received and in some cases notices return as unserved. Thus the AO in absence of the requisite evidences and information held the sundry creditors as bogus and made the addition of outstanding balances in their account

aggregating to Rs. Rs. 8,64,90,487/- by treating the same as income of the assessee.

5. Aggrieved assessee preferred an appeal before the learned CIT (A).

5.1 The assessee before the learned CIT(A) filed the additional evidences which were forwarded to the AO for remand report. The AO vide remand report dated 20-02-2017 submitted that the assessee has filed ledger copies, addresses and copy of confirmation which is signed by the same person who has signed other evidences of the assessee i.e. confirmation has not been signed by the creditor. Based on such details notices under section 133(6) of the Act were issued but no confirmation was received from the creditors except in case of M/s Pardeep Enterprises. Several notices issued under section 133 (6) of the Act were returned back with the remark "refused" or "left". The AO also challenged the admissibility of the additional evidences filed under rule 46A of the Income Tax Rule as the assessee was not prevented by the genuine cause to file the evidence at the time of assessment proceeding.

5.2 The assessee in rejoinder pleaded for acceptance of the additional evidences and inter alia submitted that detail were not submitted due to time constraint as well due to non-cooperation from the parties at that point of time. However, when the details were received, the same were furnished as additional evidences which should be accepted as the same are vital for deciding the issue on hand.

5.3 The assessee further submitted that during the remand proceeding, he has submitted ledger confirmation copy of all the parties for the year under consideration as well for the subsequent year along with copy of PAN and copy of ITR acknowledgment. It was further contended that the Revenue authority is required to make assessment in accordance with provision of law so that the assessee cannot be taxed excess due to mistake, misconception or not being properly instructed. The assessee in this regard places reliance on the several

judgments of Hon'ble Gujarat High court and Hon'ble Supreme court. It was also submitted that merely notices issued under section 133(6) of the Act were return unserved or not complied with, does give right to the AO to make unwarranted addition and in this regard refer the judgment of Hon'ble Allahabad High Court in case of M/s Nathu Ram Premchand vs. CIT (1963) 49 ITR 561 (All). The AO only considered the outcome of the notices issued under section 133(6) of the Act whereas no comment was offered on additional evidences furnished. The AO only disputed the creditors balances whereas no dispute was raised with regard to the purchases made during the year which ultimately resulted in sale.

5.4 The learned CIT (A) after considering assessee's submission, remand report and rejoinder of the assessee adjudicated the issue of genuineness of each creditor and confirmed addition in some of the cases whereas in some of the cases relief was granted in case of each creditor individually. The learned CIT(A) deleted the addition to the extent of the balance in creditors account arising out of opening balance and confirmed the balance arising out of current year transaction. In one case the learned CIT(A) even enhanced the addition. Thus in totality the learned CIT(A) allowed the appeal of the assessee in part. Against which both the assessee and the revenue are in appeal before us. The revenue grounds of appeal in ITA No. 1340/Ahd/2017 reads as under:

That the Id.CIT(A) has erred in law and on the facts in deleting addition made by the AO on account of Bogus Creditors of Rs.3,11,08,914/-

6. The learned AR before us filed paper a book running from pages 1 to 204 and contended that there were certain parties in respect of which the opening balance was shown by the assessee. Therefore, the opening balance cannot be made subject to the addition. Furthermore, the purchases shown by the assessee have been shown either in the closing stock at the end of the financial year or the same was sold subsequently. As such there was no doubt raised with respect to the closing stock shown by the assessee and sales declared by the assessee subsequently. Accordingly, the learned AR submitted that there cannot be any addition merely on the closing balances shown by the assessee.

7. On the other hand the learned DR submitted that there were outstanding balance in the name of the sundry creditors account and the genuineness of the same was not established by the assessee based on the documentary evidence. Therefore, the addition was made by the AO.

7.1 Both the learned AR and the DR before us vehemently supported the order of the authorities below as favourable to them.

8. We have heard the rival contentions of both the parties and perused the materials available on record. There was credit balance shown by the assessee in his books of accounts amounting to Rs. 8,64,90,487/- as on 31st of March 2012 in the name of 16 different parties. The assessee during the assessment proceedings failed to justify the genuineness of the impugned credit balance and therefore the same was added to the total income of the assessee treating the same as bogus sundry creditors. However, the Id. CIT-A during the proceedings before him found that there were certain credit balance in the account of different parties which were brought forward from the earlier years. Therefore the learned CIT(A) was of the view that the amount brought forward from the earlier years cannot be taxed in the year under consideration. Accordingly, the learned CIT-A deleted the addition made by the AO amounting to Rs. 3,13,36,914/- and confirmed the remaining addition of Rs. 5,59,57,173/- which were pertaining to the year under consideration.

8.1 From the preceding discussion, we note that there are total 16 parties with whom the assessee has carried out the transactions. Since, the transactions carried out by the assessee with respect to 16 different parties are of different type, therefore we are inclined to give individual finding with respect to all the 16 parties. Therefore we proceed to adjudicate party wise addition confirmed/ deleted by the learned CIT-A in the manner as detailed below:

I. Aarti Trading Co.

Against the aforesaid party, the assessee has shown credit balance of Rs. 7,61,716/- which was treated as unexplained by the AO in absence of supporting material and the added to total income of the assessee.

On appeal learned CIT(A) delete the entire addition by holding that impugned credit amount is arising from opening balance carried forwarded from the earlier year therefore addition in this account for amount credited in the earlier year is not justifiable in the year under consideration.

We perused the ledger account of the aforementioned party placed on pages 1 and 2 of the paper book. On perusal of the same we note that there was the opening credit balance of ₹ 1,70,91,265.89 against which the assessee has made sales of ₹ 1,72,50,549.89 which is not in dispute, meaning thereby these transactions have been admitted by the revenue during the assessment proceedings. Based on the above transaction, there was the debit balance in the account of the party amounting to ₹ 1,59,284/-. However at the same time there was one more entry made by the assessee which was in the nature of JV, without any narration, dated 1 April 2011 wherein impugned party was credited by the sum of ₹ 9,21,000/-. Accordingly, the net credit balance was shown by the assessee amounting to ₹ 7,61,716/- at the end financial year i.e. 31-3-2012 which was added by the AO to the total income of the assessee treating the same as unexplained creditor. We further notice that the credit balance of ₹ 7,61,716/- was settled in subsequent year by making sales by the assessee to impugned party. As such under the accounting parlance, creditors comes to existence against the purchases made by the assessee. However, in the case on hand, the assessee has not shown any purchases from such party. As such, the assessee has shown sales to the party on hand in the year under consideration as well as in the

subsequent assessment year which can be verified from the ledger copy available on pages 1 and 2 of the paper book. Thus, it seems that the basic premises adopted by the AO that the impugned party is a creditor is misplaced. As such, the balance shown in the name of the impugned party was representing the advance received against the sales. Whatever amount was received by the assessee from the impugned party by way of opening balance and JV was adjusted in the books of accounts of the assessee against the sales. This fact was very much brought to the notice of the AO during the remand proceedings but there was no adverse remark made by the AO on the contention of the assessee. Thus, the balance shown by the assessee at the end of the financial year has direct nexus with the sales recorded in the books of accounts of the assessee. Thus, if the primary transaction is in doubt then the corresponding transaction cannot be relied upon. However, we note that the Revenue has adopted contradictory stand by accepting the sales as genuine but treating the advances shown by the assessee as credit balance as bogus. To our considered view, the revenue is not expected to pick and choose any particular item for the purpose of addition but ignoring all other transactions carried out by the assessee in the year under consideration.

However, we are not convinced with the finding of the learned CIT-A to the extent that impugned amount was arising out of the opening balance. It is for the reason that there was one entry made by the assessee in the year under consideration as on 1 April 2011 by way of journal voucher which was made in the year under consideration. As such the amount involved in such journal voucher stands at ₹ 9,21,000/- whereas the balance shown by the assessee stands at ₹ 7,61,716/-. Therefore, it becomes evident that the amount in dispute is arising out of the transactions recorded by the assessee in the year

under consideration and not out of the opening balance. To this extent we are not in agreement with the finding of the learned CIT-A.

Before parting, it is important to note that the amount of addition made by the AO has been shown as sales in the subsequent year as evident from ledger account placed on page 2 of the paper book. Once, the amount of sale in subsequent year against advance receipt in current year has been accepted by the revenue, then to our mind, the question of treating the closing balance of advances in the year as bogus sundry creditor does not arise. Thus, we hold that there cannot be any addition in the hands of the assessee on account of the closing balance shown by the assessee in the name of the party as discussed above. Hence the ground of appeal of the Revenue to this extent is dismissed.

II. ACM Trading Co.

The assessee has shown credit balance of Rs. 37,40,240/- which was treated as unexplained by the AO and added to the total income of the assessee.

The learned CIT (A) during the appellate proceeding found that there was opening credit balance of Rs. 6,03,750/- carried forwarded from earlier year and during the year under consideration further purchases of Rs. 31,36,490/- was made by the assessee which resulted in total credit balance of Rs. 37,40,240/- at the end of the year under consideration. Thus, the learned CIT(A) deleted the addition to the extent of Rs. 6,03,750/- only. However, the Id. CIT-A confirmed the addition to the extent of purchases shown in the year under consideration by holding the identity and genuineness of the impugned party was not established by the assessee. The learned CIT(A) found that there was PAN of one Shri Chetan Kantilal Shah furnished by the assessee but no other evidence was provided which

could establish that Shri Chetan Kantilal Shah was sole proprietor of above mentioned party namely ACM Trading Co. Further no supporting evidences such as purchases invoice, goods delivery challan etc were furnished. The notice issued under section 133(6) of the Act received back with no remark. Therefore identity of the party and genuineness of transaction was not established by the assessee.

On perusal of the copy of the ledger of the impugned party, placed on pages 4-5 of paper book, we note that credit balance shown by the assessee comprises of opening balance and the current year purchases amount amounting to Rs. 6,03,750/ and Rs. 31,36,490/- respectively. The learned CIT (A) was pleased to delete the addition with respect to the opening balance on the reasoning that such balance was not arising in the year under consideration. To this extent, we do not find any infirmity in the order of the learned. Thus, ground raised by the revenue to this extent is dismissed.

With respect to current year transaction amounting to Rs. 31,36,490/- only, we note that the learned CIT(A) confirmed the addition on the reasoning that the assessee failed to furnish the supporting evidence with regard to the amount purchases. The controversy arises whether the purchase shown by the assessee represents the bogus transaction in the absence of supporting documents. First of all, we note that whatever purchases are made by the assessee, become part of stock in trade and subsequently sold back to the impugned party. In the given case, the sales was claimed by the assessee to have been made in the subsequent year, meaning thereby impugned amount of purchases were shown by the assessee in the stock in trade in the year under consideration. Thus the amount of purchases shown in the debit side of the profit and loss account, the assessee by the same amount has also credited the profit and loss account by way of

showing the closing stock which will made the entire transaction as tax neutral. As such, there will not be any impact on the profitability of the assessee by way of such purchases. Furthermore, in the next year, the assessee has shown sales in the books of accounts to the same party which has not been disputed by the revenue authorities. In other words, the account of the party was settled in the subsequent year by way of showing the sales to the party. Thus, the entire exercise becomes tax neutral, in the sense that if the purchases are disbelieved and corresponding closing stock and the sale of the subsequent year should also be disbelieved on the same parameter. As such the revenue cannot take different stand with respect to the common transactions having impact purchases, closing stock and the sales. All these transactions are interconnected and linked with each other. If any of the transaction is doubted then corresponding transaction should also be carrying same shadow of doubt. In other words, part of the transactions cannot be accepted as genuine and part of the transaction cannot accepted as bogus. Either the entire transaction to held as bogus or should be treated as genuine without making any cherry pick-up. Thus, we are not convinced with the finding of the learned CIT(A) accordingly ground raised by the assessee to this extent is allowed.

III. Adinath Exim

The assessee has shown credit balance of Rs. 9,99,500/- from the aforesaid party which was treated as unexplained by the AO and added to the total income of the assessee.

The learned CIT (A) during the appellate proceeding found that there were purchases of Rs. 9,99,500/- made by the assessee dated 25-03-2012 and payment against the same were outstanding till the end of the year under consideration. However, the account was settled in

next year in the month of February 2013 by showing sales made which is very unusual. The learned CIT(A) found that there was copy of ledger confirmation and PAN along ITR acknowledgment of one Smt. Asha M Jain furnished by the assessee but no other evidences provided which could established that Smt. Asha M Jain was sole proprietor of above mentioned party namely M/s Adinath Exim. The notice issued under section 133(6) of the Act were returned back with no remarks. Therefore identity of the party and genuineness of transaction was not established by the assessee.

On perusal of the copy of the ledger of the impugned party, placed on pages 7-8 of paper book, we note that credit balance shown by the assessee comprises of current year purchases amount amounting to Rs. 9,99,500/- only. The controversy arises whether the purchase shown by the assessee represents the bogus transaction in the absence of supporting documents. First of all, we note that whatever purchases are made by the assessee, become part of stock in trade and subsequently sold back to the impugned party. In the given case, the sales was claimed by the assessee to have been made in the subsequent year, meaning thereby impugned amount of purchases were shown by the assessee in the stock in trade. Thus the amount of purchases shown in the debit side of the profit and loss account, the assessee by the same amount has also credited the profit and loss account by way of showing the closing stock which will make the impugned transaction as tax neutral. As such, there will not be any impact on the profitability of the company by way of such purchases. Furthermore, in the next year, the assessee has shown sales in the books of accounts to the same party which has not been disputed by the revenue authorities. In other words, the account of the party was settled in the subsequent year by way of showing the sales to the party. Thus, the entire exercise become tax neutral, in the sense that

the purchases are disbelieved and corresponding closing stock and the sale of the subsequent year should also be disbelieved on the same parameter. As such the revenue cannot take different stand with respect to the common transactions having impact on purchases, closing stock and the sales. All these transactions are interconnected and closely linked with each other. If any of the transaction is doubted then corresponding transaction should also be carrying same shadow of doubt. In other words, part of the transactions cannot be accepted as genuine and part of the transaction cannot be accepted as bogus. Either the entire transaction should be held as bogus or should be treated as genuine without making cherry pick-up. Thus, we are not convinced with the finding of the learned CIT(A). Accordingly, the ground raised by the assessee to this extent is allowed.

IV. Ajanta Industrial Corporation

The assessee has shown credit balance of Rs. 51,90,000/- from the aforesaid party which was treated as unexplained by the AO and added to the total income of the assessee.

The learned CIT (A) during the appellate proceeding found that there was opening credit balance of Rs. 10,20,000/- carried forwarded from earlier year and further during the year under consideration an amount aggregating to Rs. 41,70,000/- was received by the assessee. Thus, the learned CIT(A) deleted the addition to the extent of Rs. 10,20,000/-. However the ld. CIT-A confirmed the addition to the extent of money received in the year under consideration by holding the identity and genuineness of the impugned party was not established by the assessee. The learned CIT(A) found that there was copy of ledger confirmation, bank statement in the name of M/s Ajanta Industrial Corporation and PAN along with ITR acknowledgment of one Shri Chetan C. Dalwadi was furnished by the assessee but no

other evidences provided which could established that Shri Chetan C. Dalwadi was sole proprietor of above mentioned party namely M/s Ajanta Industrial Corporation. Income shown by the Shri Chetan C Dalwadi was of Rs. 1,98,180/- only against the advance claimed to be made for Rs. 51,90,000/-. Further no reply forwarded in response to the notice issued under section 133(6) of the Act. Therefore identity of the party and genuineness of transaction and capacity to make advance was not established by the assessee.

On perusal of the copy of the ledger of the impugned party for the year under consideration and subsequent year i.e. F.Y. 2012-13, placed on pages 11-12 of paper book, we note that credit balance shown by the assessee comprises of opening balances and money received during the year. The account was settled in immediate subsequent year by showing sales to the impugned party. The learned CIT (A) was pleased to delete the addition with respect to the opening balance on the reasoning that such balance was not arising in the year under consideration. To this extent, we do not find any infirmity in the order of the learned CIT-A. Thus, ground raised by the Revenue to this extent is dismissed.

Coming to addition confirmed by the learned CIT(A) with regard to the amount received during the year. At the outset we note under the accounting parlance, creditors comes to existence against the purchases made by the assessee. However, in the case on hand, the assessee has not shown any purchases from such party. As such, the assessee has shown advance received in the year under consideration form the impugned party against the sales made in subsequent year which can be verified from the ledger copy available on pages 11 and 12 of the paper book. Thus, it seems that the basic premises adopted by the AO that the impugned party is a creditor is misplaced. As such,

the balance shown in the name of the impugned party was representing the advance received against the sales. Whatever amount was received by the assessee from the impugned party by way of opening balance and bank transfer was adjusted in the books of accounts of the assessee against the sales. This fact was very much brought to the notice of the AO during the remand proceedings but there was no adverse remark made by the AO on the contention of the assessee. Thus, the balance shown by the assessee at the end of the financial year has direct nexus with the sales recorded in the books of accounts of the assessee. Thus if the primary transaction is in doubt then the corresponding transaction cannot be relied upon. However we note that the revenue has adopted/contradictory stand by accepting the sales as genuine but treating the advance shown by the assessee as credit balance as bogus. To our considered view, the revenue is not expected to pick and choose any particular item for the purpose of addition but ignoring other connected transactions carried out by the assessee. Once, the amount of sale in subsequent year against advance receipt in current year has been accepted by the revenue, then to our mind, the question of treating the closing balance of advances in the year as bogus sundry creditor does not arise. Thus, we hold that there cannot be any addition in the hands of the assessee on account of the closing balance shown by the assessee in the name of the party as discussed above. Hence the ground of appeal of the Assessee to this extent is hereby allowed and revenue's ground of appeal is dismissed.

V. Balaji Trading Co.

The assessee has shown credit balance of Rs. 23,21,400/- from the aforesaid party which was treated as unexplained by the AO and added to the total income of the assessee.

The learned CIT (A) during the appellate proceeding found that there was opening debit balance of Rs. 8,13,600/- carried forward from earlier year and further during the year under consideration the ledger account of the impugned party was credited by journal adjustment entry amounting to Rs. 31,35,000/-. Thus the learned CIT(A) was of the view that the assessee is required to prove the genuineness of credit of Rs. 31,35,000/-. The learned CIT(A) found that there was copy ledger confirmation, and PAN along with ITR acknowledgment of one Shri Sudarshan Kumar R Prasad furnished by the assessee but no other evidences provided which could established that Shri Sudarshan Kumar R Prasad was sole proprietor of above mentioned party namely Balaji Trading Co. Income shown by the Shri Sudarsn Kumar R Prasad was of Rs. 4,82,936/- only against the accounts credited for Rs. 31,35,000/-. It is very unusual that amount was credited in the year was outstanding for almost a year but no interest was charged. Further the notice issued under section 133(6) of the Act return unserved with remark refused. Therefore, the identity of the party and genuineness of transaction and capacity to make advance was not established by the assessee. Accordingly, the learned CIT(A) made the addition of Rs. 31,35,000/- being the amount credited in the year. Thus the learned CIT(A) enhanced the addition by Rs. 8,13,600/- only.

We perused the ledger copy of the impugned party for the year under consideration and immediate subsequent year placed on page 20 and 21 of the paper book along with other documents. On perusal of the same, we note that credit balance shown by the assessee comprises of opening debit balances and the account credited in the year by journal adjustment entry during the year. It means that at the start of the year the impugned party was debtor from whom assessee has receivable of Rs. 8,13,600/-. However during the year a Journal entry was passed crediting the impugned party and debiting another party

namely J.K. Textile for an amount of Rs. 31,35,000/- resulted net payable of Rs. 23,21,400/- which was added to the total income of the assessee by the AO. However the learned CIT (A) enhanced the addition on the reasoning that amount credited in the year consideration is subject to addition and not the net balance at the end of the year. At this juncture it is necessary to refer the relevant provisions of section 251(2) of the Act which reads as under:

*(2) The ⁵⁶[***] ⁵⁷[Commissioner (Appeals)] shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.*

From the above reading of the provisions of law, we note that it is mandatory for the learned CIT-A before enhancing the income that he has to provide the opportunity of being heard to the assessee. However, we find that no such opportunity has been extended to the assessee. The Id. DR has also not provided anything contrary to the arguments advanced by the Id. AR for the assessee. Therefore, to our understanding, the addition of Rs. 8,31,600.00 is not warranted in the given facts and circumstances.

Coming to the remaining amount of addition for Rs. 23,21,400/- confirmed by the learned CIT(A). At the outset we note under the accounting parlance, creditors comes to existence against the purchases made by the assessee. However, in the case on hand, the assessee has not shown any purchases from such party. As such, the assessee at the start of the year has shown amount receivable and amount credited in the year under consideration from the impugned party was adjusted against the sales made in subsequent year which can be verified from the ledger copy available on pages 20 and 21 of the paper book. Thus, it seems that the basic premises adopted by the AO that the impugned party is a creditor is misplaced. As such, the balance shown in the name of the impugned party was adjusted

in the books of accounts of the assessee against the sales. This fact was very much brought to the notice of the AO during the remand proceedings but there was no adverse remark made by the AO on the contention of the assessee. Thus, the balance shown by the assessee at the end of the financial year has direct nexus with the sales recorded in the books of accounts of the assessee. Thus if the primary transaction is in doubt then the corresponding transaction cannot be relied upon. However, we note that the revenue has adopted contradictory stand by accepting the sales as genuine but treating the credit shown by the assessee as bogus. To our considered view, the revenue is not expected to pick and choose any particular item for the purpose of addition after ignoring other connected transactions carried out by the assessee. Once, the amount of sale in subsequent year against the amount credited in current year has been accepted by the revenue, then to our mind, the question of treating the closing credit balance in the year as bogus sundry creditor does not arise. Thus, we hold that there cannot be any addition in the hands of the assessee on account of the closing balance shown by the assessee in the name of the party as discussed above. Hence the ground of appeal of the assessee to this extent is hereby allowed.

VI. Betala Impex Pvt Ltd.

The assessee has shown credit balance of Rs. 1,17,19,777/- from the aforesaid party which was treated as unexplained by the AO and added to the total income of the assessee.

The learned CIT (A) during the appellate proceeding found that there was opening debit balance of Rs. 2,09,52,999/- only. Thus at the start of the year, the impugned party was debtor. However during the year assessee made purchases amounting to Rs. 3,33,10,777/- from the party and the same party becomes a creditor in the books. The learned

CIT(A) found that there was copy ledger confirmation, and PAN along with ITR acknowledgment furnished by the assessee but no computation, bank statement and financial statement produced showing sales was incorporated in the books of impugned party. The impugned party has shown very meager income of Rs. 52,589/- only whereas huge transaction claimed to be made with such party. It was also found that amount paid by the assessee was immediately withdrawn or transferred to other person. No evidence produced showing the impugned party is actually engaged in business. Further no supporting evidences such as invoice, delivery challan etc were furnished in support of purchases made. Therefore the assessee failed to establish the genuineness of purchase.

Coming to the addition confirmed by the learned CIT (A) on account of purchases made during the year. The controversy arises whether the purchase shown by the assessee represents the bogus transaction in the absence of supporting documents. First of all, we note that whatever purchases were made by the assessee, become part of stock in trade and subsequently sales are made. Thus, the amount of purchases shown in the debit side of the profit and loss account, the assessee by the same amount has also credited the profit and loss account by way of showing the closing stock which will make the entire transaction as tax neutral. As such, there will not be any impact on the profitability of the company by way of such purchases. Furthermore, the assessee has shown sales in the books of accounts against the purchases which has not been disputed by the revenue authorities. In other words, the account of the party was settled in the subsequent year by way of showing the sales to the party. Thus, the entire exercise becomes tax neutral, in the sense that if the purchases are disbelieved and corresponding closing stock and the sale in the subsequent year should also be disbelieved on the same parameter.

As such the revenue cannot take different stand with respect to the common transactions having impact on purchases, closing stock and the sales. All these transactions are interconnected and closely linked. If any of the transaction is doubted then the corresponding transaction should also be carrying same shadow of doubt. In other words, part of the transactions cannot be accepted as genuine and part of the transaction cannot be accepted as bogus. Either the entire transaction to be held as bogus or should be treated as genuine without making any cherry pick-up. Thus, we are not convinced with the finding of the learned CIT(A). Accordingly, the ground raised by the assessee to this extent is allowed.

VII. G.G. Enterprise

The assessee has shown credit balance of Rs. 39,00,000/- from the aforesaid party which was treated as unexplained by the AO and added to the total income of the assessee.

The learned CIT (A) during the appellate proceeding found that there was opening debit balance of Rs. 22,75,251/- only. Further, during the year, the assessee made purchases of Rs. 1,61,20,251/- against which made payment of Rs. 99,93,000/- and payment for Rs. 39,00,000/- was still outstanding at the end of the year. The learned CIT(A) further found that there was copy ledger confirmation, financial statement along tax audit report, copy of ITR etc. furnished by the assessee which sufficient enough to hold genuineness of creditor. Thus the learned CIT (A) deleted the addition made by the AO against credit balance of the impugned party.

We perused the documentary evidences furnished by the assessee being ledger confirmation copy, financial statement, audit report, bank statement etc. of the impugned party which are placed on page 47 to

83 of the paper books. From these documents, there remains no ambiguity that the assessee has discharged his onus and explained the genuineness of the party. All these documents were also available before the AO during remand proceedings but the AO merely for the reason that no reply submitted in response to notice under section 133(6) of the Act brushed aside the documentary evidences. To our understanding genuineness of transaction cannot be doubted merely for noncompliance of notice under section 133(6) by the other party especially when assessee is able to furnish sufficient documentary evidences. Therefore we do not see any infirmity in the order of the learned CIT(A) to this extent. Hence the ground of appeal of the Revenue to the extent of this party is dismissed.

VIII. Haldar Reality & Enterprises Ltd.

The assessee has shown credit balance of Rs. 3 crores from the aforesaid party which was treated as unexplained by the AO and added to the total income of the assessee.

The learned CIT (A) during the appellate proceeding found that that assessee during the year claimed to have made purchases of Rs. 3 crores which were supported by copy of ledger confirmation but the same was not signed by the party. The assessee also furnished bank statement of Cosmos bank and RBL. The RBL bank account is in the name of the assessee which contain transaction for A.Y. 2013-14 and not the year under consideration whereas the account holder name does not appear on Cosmos Bank. There was also no supporting evidence furnished to justify the purchases actually made by the assessee. Therefore, the learned CIT(A) confirmed the addition made by the AO by holding that the assessee failed to establish the genuineness of purchase.

Coming to the addition confirmed by the learned CIT (A) on account of purchases made during the year. The controversy arises whether the purchase shown by the assessee represents the bogus transaction in the absence of supporting documents. First of all, we note that whatever purchases were made by the assessee, become part of stock in trade and subsequently sales are made. Thus, the amount of purchases shown in the debit side of the profit and loss account, the assessee by the same amount has also credited the profit and loss account by way of showing the closing stock which will make the entire transaction as tax neutral or has shown sale. As such, there will not be any impact on the profitability of the company by way of such purchases. Furthermore, the assessee has shown sales in the books of accounts against the purchases which has not been disputed by the revenue authorities. In other words, the account of the party was settled in the subsequent year by way of showing the sales to the party. Thus, the entire exercise becomes tax neutral, in the sense that if the purchases are disbelieved and corresponding closing stock and the sale of the subsequent year should also be disbelieved on the same parameter. As such the revenue cannot take different stand with respect to the common transactions having impact on purchases, closing stock and the sales. All these transactions are interconnected and closely linked. If any of the transaction is doubted then the corresponding transaction should also be carrying same shadow of doubt. In other words, part of the transactions cannot be accepted as genuine and part of the transaction cannot be accepted as bogus. Either the entire transaction to be held as bogus or should be treated as genuine without making cherry pick-up. Thus, we are not convinced with the finding of the learned CIT(A). Accordingly, the ground raised by the assessee to this extent is allowed.

IX. Hanuman Traders and Shree Salasar Balaji Apparels Ltd.

The assessee has shown credit balance of Rs. 6,45,254/-, and Rs. 85,872/- respectively from the aforementioned 2 parties which was treated as unexplained by the AO and added to the total income of the assessee.

The learned CIT (A) during the appellate proceeding found that there were opening balances which were carried forwarded from earlier year and no other transaction carried out during the year under consideration with these 2 parties. Therefore the learned CIT (A) was pleased to delete the addition with respect to the balance of these parties on the reasoning that such balance was not arising in the year under consideration.

We also perused the ledger copy of Hanuman Traders placed on page 102 of the paper book and ledger copy of Shree Salasar Balaji Apparels Ltd placed on page 180 of paper book and found that there was no transaction carried out with impugned parties during the year. As such the balance is carried forwarded from earlier year. Therefore, to this extent, we do not find any infirmity in the order of the learned CIT-A. Thus, ground raised by the revenue to this extent is dismissed.

X. J.K. Textile

The assessee has shown closing credit balance of Rs. 29,24,406/- from the aforesaid party which was treated as unexplained by the AO and added to the total income of the assessee.

The learned CIT (A) during the appellate proceeding found that during the year assessee made purchases of Rs. 26,96,406/- only. However, due to opening balance and other adjustment entry, the final outstanding balance was shown at Rs. 29,24,406/- only. The amount

credited during the year will be subject to addition which stand at 26,96,406/- only. The learned CIT (A) further found that the assessee furnished the ledger confirmation copy and ITR acknowledgment of Shri Jagdishchandra Hingad but no other document was filed evidencing that Shri Jagdishchandra Hingad is sole proprietor of the impugned party and the notice issued under section 133(6) of the Act were returned as unserved with remark left. Therefore the identity of the party was not established neither it is established that such party is doing any business. Hence, the Id. CIT-A confirmed the addition to the extent of Rs. 26,96,406/- by allowing the relief to the extent of Rs. 2,28,000/- on the reasoning that such balance was not arising in the year under consideration. To the extent of relief provided by the learned CIT(A) with respect to opening balance included in closing balance, we do not find any infirmity. Thus, ground raised by the revenue to this extent is dismissed.

Coming to the addition confirmed by the learned CIT (A) on account of purchases made during the year for Rs. 26,96,406/- only. We find that the assessee has furnished ledger confirmation copy for the year under consideration as well for the immediate subsequent year and copy of ITR acknowledgment placed on pages 107 to 109 of the paper book. On perusal of the same we note that the purchases made during year were settled in immediate subsequent year by making sales to impugned party. The controversy arises whether the purchase shown by the assessee represents the bogus transaction in the absence of supporting documents. First of all, we note that whatever purchases were made by the assessee, become part of stock in trade and subsequently sold back to the impugned party. In the given case, the sales was claimed by the assessee to have been made in the subsequent year, meaning thereby impugned amount of purchases were shown by the assessee in the stock in trade. Thus the amount

of purchases shown in the debit side of the profit and loss account, the assessee by the same amount has also credited the profit and loss account by way of showing the closing stock which will make the entire transaction as tax neutral. As such, there will not be any impact on the profitability of the company by way of such purchases. Furthermore, in the next year the assessee has shown sales in the books of accounts to the same party which has not been disputed by the revenue authorities. In other words, the account of the party was settled in the subsequent year by way of showing the sales to the party. Thus, the entire exercise becomes tax neutral, in the sense that the purchases are disbelieved and corresponding closing stock and the sale of the subsequent year should also be disbelieved on the same parameter. As such the revenue cannot take different stand with respect to the common transactions having impact purchases, closing stock and the sales. All these transactions are interconnected and closely linked. If any of the transaction is doubted then the corresponding transaction should also be carrying same shadow of doubt. In other words, part of the transactions cannot be accepted as genuine and part of the transaction cannot be accepted as bogus. Either the entire transaction to be held as bogus or should be treated as genuine without making cherry pick-up. Thus, we are not convinced with the finding of the learned CIT(A). Accordingly, the ground raised by the assessee to this extent is allowed.

XI. Nakoda Trading Co. and Sati Mata Trade Link

The assessee has shown credit balance of Rs. 56,43,435/- and Rs. 177,56,720/- respectively from the aforementioned 2 parties which was treated as unexplained by the AO and added to the total income of the assessee.

The learned CIT(A) during the appellate proceeding found that there was copy of ledger confirmation, financial statement along tax audit report, copy of ITR etc. furnished by the assessee which sufficient enough to hold genuineness of creditor. Thus the learned CIT (A) deleted the addition made by the AO against credit balance of the above mentioned 2 parties.

We also perused the documentary evidences furnished by the assessee being ledger confirmation copy, financial statement, audit report, bank statement etc. of the impugned parties which are placed on page 110 to 138 and 143 to 179 of the paper books. From there remain no ambiguity that the assessee has discharged his onus and explained the genuineness of the party. All these document were also available before the AO during remand proceeding but the AO merely for the reason that no reply submitted in response to notice under section 133(6) brushed aside the documentary evidences. To our understanding genuineness of transaction cannot be doubted merely for noncompliance of notice under section 133(6) by the other party especially when assessee is able to furnish sufficient documentary evidences. Therefore we do not any infirmity in the order of the learned CIT(A) to this extent. Hence the ground of appeal of the Revenue to the extent of this party is dismissed.

XII. Pardip Enterprise Ltd.

The assessee has shown credit balance of Rs. 6,55,696/- from the aforesaid party which was treated as unexplained income by the AO and added to the total income of the assessee.

However at the time of appellate proceeding the AO in remand report submitted that the impugned party confirmed the amount in response to the notice issued under section 133(6) of the Act. Therefore the

learned CIT(A) in view of the remand report deleted the addition made by the AO on account credit balance shown in name of impugned party.

In our considered view once the assessee furnished additional evidences and the learned CIT (A) provided opportunity to the AO by requiring remand report and the AO after application of mind does not find any infirmity and based on that the addition is deleted by appellate authority. There remain no grievances to the revenue.

Before parting it is also important to highlight that the closing balance shown by the assessee from impugned party is arising from opening balance carried forwarded from earlier year. As such no any transaction carried out by the assessee in the year under consideration with the impugned party. This fact can be verified from the ledger copy placed on page 139 of the paper book. Therefore for this reason also the addition made by the AO is not justified. Thus we confirmed the order of the learned CIT(A) to the extent of deletion made by him with regard to this party namely M/s Pradip Enterprises Ltd. Hence the ground of appeal of the Revenue to this extent is hereby dismissed.

XIII. Sati Mata Trade Link

Against the aforesaid party the assessee has shown credit balance of Rs. 1,77,56,720/- which was treated as unexplained by the AO in the absence of supporting materials and the added to total income of the assessee.

On appeal, the learned CIT(A) deleted the entire addition by holding that there was copy ledger confirmation, Final Accounts in form 3CB, profit & loss account, Balance sheet, PAN along with ITR

acknowledgment, bank statement of one Smt. Taraben A. Jain Therefore, the identity of the party and genuineness of transaction was established by the assessee. In view of the above we hold that assessee has discharged the onus by furnishing the requisite details in support of the impugned sundry creditor. Furthermore, the purchases made by the assessee has been accounted sales in the subsequent year which have not been doubted by the AO. Once, the amount of sale in subsequent year against the amount credited in current year has been accepted by the revenue, then to our mind, the question of treating the closing credit balance in the year as bogus sundry creditor does not arise. Thus, we hold that there cannot be any addition in the hands of the assessee on account of the closing balance shown by the assessee in the name of the party as discussed above. Hence the ground of appeal of the assessee to this extent is hereby allowed.

XIV. Sun Traders.

The assessee has shown credit balance of Rs. 1 Lakh from the aforesaid party which was treated as unexplained by the AO and added to the total income of the assessee.

The learned CIT (A) during the appellate proceeding found that on 1st April 2011 the account of the impugned party was credited by book entry for an amount of Rs. 1 Lakh. The assessee during remand proceeding furnished copy ledger confirmation, and ITR acknowledgment of one Shri SP Gehel but no other evidence was provided which could establish that Shri S.P. Gohel was sole proprietor of above mentioned party namely Sun Traders. Further the notice issued under section 133(6) of the Act but no reply was received. Therefore identity of the party and genuineness of transaction was not

established by the assessee. Accordingly the learned CIT(A) confirmed the addition.

We perused the ledger copy of the impugned party for the year under consideration and immediate subsequent year placed on page 183 and 184 of the paper book along with other documents. On perusal of the same, we note that credit balance shown by the assessee arising due to journal adjustment entry made during the year. The assessee against impugned credit balance made sales in subsequent year. Thus, it is inferred that such party is the customer of the assessee from whom the assessee received advance in form book entry against which assessee made sales. At the outset we note under the accounting parlance, creditors comes to existence against the purchases made by the assessee. However, in the case on hand, the assessee has not shown any purchases from such party. As such, the assessee has shown advance received in the year under consideration from the impugned party by way of journal entry against the sales made in subsequent year which can be verified from the ledger copy available on pages 183 and 181 of the paper book. Thus, it seems that the basic premises adopted by the AO that the impugned party is a creditor is misplaced. As such, the balance shown in the name of the impugned party was representing the advance received against the sales. Whatever amount was received by the assessee from the impugned party was adjusted in the books of accounts of the assessee against the sales. This fact was very much brought to the notice of the AO during the remand proceedings but there was no adverse remark made by the AO on the contention of the assessee. Thus, the balance shown by the assessee at the end of the financial year has direct nexus with the sales recorded in the books of accounts of the assessee. Thus if the primary transaction is in doubt then the corresponding transaction cannot be relied upon. However we note

that the revenue has adopted contradictory stand by accepting the sales as genuine but treating the advances shown by the assessee as credit balance as bogus. To our considered view, the revenue is not expected to pick and choose any particular item for the purpose of addition after ignoring other connected transactions carried out by the assessee. Once, the amount of sale in subsequent year against advance receipt by way journal entry in current year has been accepted by the revenue, then to our mind, the question of treating the closing balance of advances in the year as bogus sundry creditor does not arise. Thus, we hold that there cannot be any addition in the hands of the assessee on account of the closing balance shown by the assessee in the name of the party as discussed above. Hence the ground of appeal of the assessee to this extent is hereby allowed.

8.2 In view of the above elaborated discussion, the ground of appeal of the assessee is hereby allowed whereas the ground of appeal of the Revenue is dismissed.

In the result appeal of the assessee is hereby allowed.

Coming to ITA No. 1340/Ahd/2017 an appeal by the Revenue.

9. The Revenue has raised following grounds of appeal:

1. *That the Id.CIT(A) has erred in law and on the facts in deleting addition made by the AO on account of Bogus Creditors of Rs.3,11,08,914/-*
2. *That the Id.CIT(A) has erred in law and the facts in deleting addition made by the AO on account of Discount Expenses of Rs.35,912/-*

10. The First issue raised by the Revenue is that the learned CIT(A) erred in deleting addition of Rs. 3,11,08,914/-made on account of bogus creditors.

11. At the outset we note that issue raised by the assessee vide its ground of appeal has been adjudicated along with the assessee grounds of appeal in ITA NO. 1207/Ahd/2017 where we vide paragraph no. 8 of this order have decided the issue in favour of the assessee and against the Revenue. Thus the ground of appeal raised by the Revenue is hereby dismissed.

12. The next issue raised by the Revenue is that the learned CIT(A) erred in deleting the addition of Rs. 35,912/- made on account of discount expenses.

13. The assessee in the books claimed discount expenses of Rs. 35,912/- only. However, at the time of assessment the assessee failed explain the claim of discount expenses. Thus the AO disallowed the same and added to the total income of the assessee.

14. On appeal learned CIT(A) deleted the addition by observing as under:

In ground no.2 of the appeal, the appellant has challenged the disallowance of discount of Rs.35,912/-. The AO has made the disallowance on the ground that the appellant has not filed any details about discount despite being given a show show cause notice. The appellant has argued that the discount expenses works out 0.031% only. This argument of the appellant is reasonable and therefore accepted. The AO has not brought anything on record to show that it is excessive or unreasonable. Therefore, this addition is deleted and the ground no.2 is accordingly allowed.

15. Being aggrieved by the order of the learned CIT-A, the Revenue is in appeal before us.

16. Both the learned DR and the AR before us respectively relied on the order of the authorities below as favourable to them.

17. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that the addition made by the AO was deleted by the learned CIT-A on the reasoning that the amount involved in the discount expenses shown by the assessee was of negligible value which

constitutes only 0.031%. At the time of hearing the learned DR has not brought anything contrary to the findings of the learned CIT-A. Considering the smallness of amount, we do not find any reason to interfere in the order of learned CIT-A. Hence, the ground of appeal of the Revenue is hereby dismissed.

18. In the combined results, the appeal filed by the assessee is allowed whereas the appeal filed by the Revenue is dismissed.

Order pronounced in the Court on 10/08/2022 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 10/08/2022
Manish

(True Copy)