

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 479/Asr/2018
Assessment Year:2009-10**

ITO, Ward-1(2), Bathinda. (Appellant)	Vs.	M/s Shree Bhagwati Cotton Traders, Dhobi Bazar, Bathinda. [PAN:AAOFS4863K] (Respondent)
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**I.T.A. No. 480/Asr/2018
Assessment Year:2009-10**

M/s Shree Bhagwati Cotton Traders, Dhobi Bazar, Bathinda. [PAN:AAOFS4863K] (Appellant)	Vs.	ITO, Ward-1(2), Bathinda. (Respondent)
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Appellant by	Sh.Sudhir Sehgal, & Sh. P.N. Arora, Adv.
Respondent by	Sh. Amlendu Nath Misra, CIT. DR.

Date of Hearing	28.09.2022
Date of Pronouncement	13.10.2022

ORDER

Per Anikesh Banerjee, J.M.:

The Cross appeals were filed by the revenue and the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Bathinda, [in brevity the CIT(A)] for Assessment Years 2009-10, the order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act]. The impugned orders were emanated from the orders of the Id. Income Tax Officer, Ward-1(2), Bathinda, [in brevity the AO] order passed u/s 143(3)/147 of the Act, date of order 23.12.2016.

2. At the outset, the relevant factual backdrops as well as the issues involved in both the cases are co-related. After consent of both the parties, we are adjudicating the matter in ITA No.480/Asr/2018 for A.Y. 2009-10 as lead case.

ITA No.480/Asr/2018

The assessee has taken the following grounds which are as under:

“1. On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the validity of notice issued under section 148 of the Income Tax Act whereas as per facts and other material placed on record, notice issued under section 148 of

the Income Tax Act is a illegal and invalid notice issued without any proper and valid reasons.

2. *On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred by holding the validity of re-assessment proceedings and thereby confirming the addition of Rs. 3.45.200/- after applying NP of 1% on the transactions which have duly been disclosed by the assessee appellant in his books of accounts.*

3. *That the appellant craves to add or amend the grounds of appeal.”*

ITA No.479/Asr/2018

3. The revenue has also taken the following grounds which are as under:

“(i) The CIT(A) erred in not appropriately taking into consideration the order of Hon’ble Supreme Court in the case of N.K. Protein Ltd. vs. CIT, 84 taxmann.com 195 without appreciating that the order was directly and squarely applicable to the facts of the case.

(ii) The CIT(A) erred in not appreciating that the alleged purchases were from a not existing entity and hence were bogus and were held as such correctly by the AO.

(iii) The CIT(A) erred in directing to apply net profit rate of 1% on gross sales even after observing that the assessee failed to provide details of transportation of goods from Partap Enterprises thereby confirming the findings of the AO.

(iv) The CIT(A) erred in observing that if genuineness of purchases & sales of the assessee was disputed, the assessee was merely a entry provider without appreciating the observations of the AO to the effect that the purchases shown to have made from M/s Partap Enterprises were bogus as the assessee failed to prove genuineness of sales in respect of such alleged purchases.

(v) The CIT(A) erred in observing that taking out of purchases from trading account would show abnormal GP without appreciating that onus was upon the assessee to disclose source of purchases in respect of sales made during the year.

(vi) The CIT'(A) erred in deleting the addition of Rs. 3 lakh made by AO u/s 68 on account of unexplained credit in the books of account without appreciating that the primary onus of proving capacity of the creditor as well as genuineness of the transaction was not discharged by the assessee.”

4. Brief fact of the case is that both appeal of the assessee and the revenue was emanated from a common order of the Id. CIT(A) which is mentioned above. The assessee has challenged both the legal and the factual ground related to assessment made by the revenue. The reopening was made u/s 148 related to a transaction with a party M/s Pratap Enterprises, Proprietor Mr. Varinder Kumar. The reason was recorded which was duly challenged by the assessee and submitted the objection before the AO. Considering the transaction with the party Mr. Pratap Enterprises, the addition was made amount of Rs.3,67,94,540/-. The said party of the assessee is a seller and assessee purchased the goods from this party during this financial year. The grievance of the Id. AO was that the said party during this year had not filed the return of income and the payment amount of Rs.27,80,000/- was withdrawn by cash by the party from its bank account. Accordingly, the entire transaction was treated as bogus. Further Rs.3 lac was added back for introduction of capital by the partner, Mr. Subhash Gupta and also Rs.18,04,903/- outstanding balance of Mr. Sadhu Ram was added back as it is not credited in the books of account. The assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) deleted the addition amount of Rs.3 lac related introduction of capital in partnership firm

by partner and Rs.18,04,903/- related to the bogus sundry creditors. Related to bogus purchased only the addition was made @ 1% of total purchased and rest of the amount was deleted by the Id. CIT(A).

5. Being aggrieved assessee & revenue both filed an appeal before us.

Adjudication of ITA No. 480/Asr/2018

6. The Id. Counsel of the assessee, Mr. Sudhir Sehgal vehemently argued and placed that the assessee is a trader of cotton and is in same line of business from past many years. The case of the assessee was reopened u/s 148 of the Act by issuing notice on 31.03.2016. The case was reopened on basis of the reasons recorded. The copy of the reasons recorded in **APB page 24** is reproduced here as below:

“Reasons under section 147 of the Income Tax Act, 1961.

This office is in possession of certain information that during the year under consideration, the assessee has transferred Rs.27,80,000/- (Rs. 10 Lac on 06.10.2008 & Rs. 80,000/- on 14.11.2008) into the bank account No. 0681 1131000314 with Oriental Bank of Commerce, City Thana Road, Sirsa maintained in the name of Sh. Varinder Kumar. Prop. M/s Partap Enterprises, Shop No. 15, Additional Mandi, Sirsa. These amounts have been withdrawn in cash by Sh. Varinder Kumar,

Prop. M/s Parta Enterprises, Shop No. 15, Additional Mandi, Sirsa through self-cheque. On verification inquiry it was found that there is no such firm in the name of Sh. Varinder Kumar, Prop M/s Partap Enterprises Shop No. 15, Additional Mandi, Sirsa at the given address. Therefore, the above said bank account remained unverified. The purpose of fund transferred, and immediate cash withdrawal is not verifiable. Therefore I have reasons to believe that the income of Rs. 27,80,000/- chargeable to tax for the A.Y. 2009-10; ant any other income which comes to the notice subsequently has escaped assessment, wit! in the meaning of explanation 2(b) of section 147 of the Income Tax, 1961.”

6.1 As per the recorded reasons, the total amount of Rs.27,80,000/- was paid to M/s Pratap Enterprises Proprietor and Mr. Varinder Kumar in following sequences on dated 06.10.2008, Rs.10 lac and Rs.17,80,000/- on dated 14.11.2008. But the assessee filed the objection before the ld. AO against the reopening and a ledger account was filed which is also annexed in the **APB pages 34 to 35**. As per the ledger the assessee has made transaction with the party Rs.3,45,20,115/- during the financial year. Further the Rs.10 lac which was presumed to transfer on 06.10.2008 to the party was fully wrong and the copy of the bank statement was

submitted before the Id. AO. The assessee filed an objection before the Id. AO on dated 10.08.2016. The copy of the objection is annexed. The relevant part of the objection is reproduced as below:

“As per reasons recorded, it has been mentioned that the firm has transferred a sum of Rs. 27,80,000/- in the bank account of Varinder Kumar Prop. M/s Partap Enterprises, Shop No. 15, Additional Mandi, Sirsa. In this regard, it is submitted that as per record of the assessee firm no amount of Rs. 10,00,000/- has been transferred on 06-10-2008 and if there is any material to show that the amount has been transferred the necessary copies of the same be supplied so that proper reply be filed accordingly. Further the firm has paid a sum of Rs. 17,80,000/- to M/s Partap Enterprises, Sirsa against purchase of goods from this concern. During year firm has purchased goods of Rs. 3,45,20,115/- as per copy of account enclosed. Further as per our record the PAN of M/s Partap Enterprises, Sirsa is AZSPK9182C.”

6.2 The Id. Counsel further argued that the issue was placed before the Id. AO and Id. CIT(A). Both had not considered the issue during the adjudication. The Id. Counsel further submitted the catena of judgment which is as below:

(i) **PCIT Vs G & G Pharma Ltd,384 ITR 147 (DEL)**, in which, it has been held as under: -

“Without forming a prima facie opinion, on the basis of such material, it was not possible for him to have simply concluded that it was evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries. The basic jurisdictional requirement was application of mind by the Assessing Officer to the material produced before issuing the notice for reassessment. Without analysing and forming a prima facie opinion on the basis of material produced, it was not possible for the Assessing Officer to conclude that he had reason to believe that income had escaped assessment”

(ii) **Signature Hotels Pvt Ltd. Vs ITO, 338 ITR 51 (DEL)** , and it has been held in para 14 of the judgment as under:-

“In the present case also, the AO simply acted upon the information received from the Investigation Wing and did not apply his own mind. Therefore, the reopening u/s 147 by issuing the notice u/s 148 of the Act only on the basis of information received from the Investigation Wing was not valid. Accordingly, the reassessment framed by the AO is quashed. ”

h. Further, it has been held that reasons should be discernible from the material record in the following cases:

- (iii) **CIT vs Sfil Stock Broking Ltd. [2010] 325 ITR 285 (Delhi)**
- (iv) **Prashant S. Joshi vs ITO [2010] 324 ITR 154 (Bom)**
- (v) **ACIT vs. I.B.M World Trade Corporation [1995] 216 ITR 811 (Bom)**
- (vi) **Hindustan Lever Ltd. vs RB Wadekar [2004] 137 Taxman 479 (BOM.)**

6.3. In the present case, nothing is discernible to form the reasons as recorded by the AO, since how can self-withdrawals by the third party from his regular account be treated as reason to believe and further payment of Rs. 17.80 has been made towards purchases and that party after few years is not traceable, it is not the fault of the assessee.”

7. We heard the rival submission and considered the documents available in the record related to the grounds of the appeal by challenging the notice u/s 148, the ld. AO has erred to issue the notice by mentioning Rs.10 lac paid by the assessee. The said notice has no relevance with the observation in factual aspect. The reasons recorded in fact there is no live nexus related to this payment of Rs.10 lac and assessee’s books of account. Recorded reasons itself erroneous and the notice is liable to be quashed.

8. Accordingly the **ground no. 1 of the assessee** is allowed.

Ground No.2

9. Related the Ground No. 2, we heard the rival submissions and considered the documents available on the record. During hearing Id. Counsel first pointed out that the assessee had a transaction for purchasing of goods with M/s Pratap Enterprises. The Pratap Enterprises had purchased from M/s Birla Textile Mills, Baddi and M/s Chenab Textile Mills, Kathua. In the **remand report of the Assessing Officer was received by Id. CIT(A) on 27.02.2018** and which was discussed in para 5.3 of the order of Id. CIT(A). In the said remand report, it is duly been mentioned that the parties M/s Birla Textile Mills, Baddi and M/s Chenab Textile Mills, has duly filed the information to the Id. AO depicting the goods purchased from the assessee, GIR No. date and invoice No. along with amount. In the paper book the assessee submitted copy of account of Pratap Enterprises **APBpage nos. 34 to 35** copy of detail sales made to M/s Chenab Textile Mills, Kathua, after purchasing from M/s Pratap Enterprises in**APB page no. 43 to 69**. The detailedflow sheet related movement of goods was prepared regarding purchases made from Pratap Enterprises and corresponding sales made to M/s Birla Textile Mills, Baddi and M/s Chenab Textile Mills, Kathua, enclosed by assessee in **APB pages 79 to 82**.

9.1 The Id. CIT(A) has accepted the assessee's submission and the entire purchase was duly considered. The observation was depicted in the relevant paragraph of the order of the Id. CIT(A) is extracted as below:

“It is also settled that in order to arrive at net profit the Assessing Officer would have to resort to Guess Work for the reason that estimation would involve element of variation. The case of the appellant is hanging between being an accommodation entry provider who earn very low commission income and a cotton who has failed to produce complete documentation. In totality of circumstances, applying rate of 1% on the turnover would result into correct income of the appellant therefore the Assessing Officer is directed to calculate the net profit by applying 1% in place of 0.55% as reported in the Audit Report dated 08.09.2009 (in column 32 of Form 3CB). The addition made by the Assessing Officer to the extent of Rs.3,45,20,115/- is deleted.”

10. The Id. Counsel further relied on the order of Hon'ble Supreme Court in the case of

PCIT, Surat-1 vs. Tejuarohitkumar Kapadia, (2018) 94 taxmann.com325

(SC) held:

“Section 69C of the income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) -Assessing Officer had disallowed some expenditure treating purchases as bogus and made addition - High Court in impugned order noted that purchases made by assessee-trader were duly supported by bills and payments were made by account payee cheque and seller also confirmed transaction and there was no evidence to show that amount was recycled back to assessee, and held that addition was not called for - 'Whether, on facts, SLP against said order was to be dismissed - Held, yes”

10.1 The ld. CIT DR vehemently argued and relied on the order of the assessing authority.

10.2 Considering the above submissions the entire purchase of the assessee was duly substantiated before the appellate authority. The assessee by his evidence able to prove the transaction with the party and also the next stage of transaction was also proved. None of the parties denied the said transactions. In fact, the assessee had not filed return during the assessment year. But in succeeding year the return was filed. There was no proof that the said amount was returned back to the assessee by other mode of transactions. Respectfully considered the order of the Apex Court, the assessee is able to proof the transaction with the party and

business activities are going on just beyond the doubt. Considering this the ground no. 2 of the appeal is allowed.

11. In the result, the **ground no. 2 of the assessee** is allowed.

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12. Related to this appeal the revenue had filed the grounds for introduction of capital Rs.3 lac by the partner. The partners are already dealt by the Id. CIT(A) in para 7 & 7.1 of his order. The extract of the observation of the Id. CIT(A) is as below:

“7.0 Ground of Appeal no. 9: This ground of appeal is related to addition of Rs. 3,00,00/- received from Sh. Subhash Gupta, partner which as per discussions made in paragraph 6 of the assessment order was unexplained cash credit within the meaning of section 68 of Income Tax Act and hence added.

7.1 The appellant in the course of appeal proceedings submitted the aforesaid amount referred to by the Assessing Officer in the assessment order was in fact appearing in the capital account of the partner Sh. Subhash Gupta who is also proprietor of Saurbh Enterprises. It was contended that the credits appearing

in partner's capital account have to be examined in the hands of the partner and not in the hands of the partnership firm.”

13. The ld. CIT DR vehemently argued and relied on the order of the assessing authority.

14. The ld. Counsel in his counter argument relied on the order of the Hon'ble Punjab & Haryana High Court in the case of;

i) **Income Tax Officer vs. M/s Capital Sales Corpn, Phagwara in ITA No.67 of 1999 (P&H)** the extract of the relevant para is as below:

*“A due consideration of the impugned orders would reveal that the firm furnished explanation that it had received funds from its partners. The firm, having disclosed the source of funds, it was absolved of its liability, if any, to explain the source of funds. The onus to explain receipts of the money, lay upon the partners who should have been asked to disclose the source of funds. The findings recorded by the Commissioner of Income Tax (Appeals), affirmed by the Income Tax Appellate Tribunal that as the firm has explained the source of funds, the revenue is required to proceed against the partner, do not suffer from any error of law. The questions of law are, therefore, answered against the revenue and the appeal is dismissed.
”*

ii) **CIT Vs Burma Electro Corpn. [2003] 126 taxmann 533, (P&H)** in which, it has been held as under:-

“The assessee was a partnership concern. The Assessing Officer made additions to the returned income on account of unexplained cash credits in the capital accounts of the partners. The Commissioner (Appeals) confirmed the additions. On second appeal, the Tribunal found that it could not be established that the partners had sufficient funds in their possession to prove that said investments were made from that found in the capital accounts. The concerned partners, however, admitted to have made those investments. The Tribunal finally deleted the additions on the ground that the revenue and failed to establish the availability of funds at the time of investment with the assessee and further to bring on record any material to indicate that those unexplained investments were the profits of the assessee. It held that as such said credits could not be assessed as the income of the assessee in terms of section 68 but might be assessed in the individual hands of the partners, if it is permissible under section 69.
”

15. We find no infirmity in the order of the Id. CIT(A). The introduction of capital by the partner, Sh. Saurabh Gupta was already confirmed by the partner

himself. The addition if recorded should be in the hands of the partner not in the partnership firm. Accordingly, the ground of the revenue bearing **ground no. 6** is dismissed.

14.1 In relation to ground nos. 1 to 5 the revenue has cited the order of **M/s N.K. Protein Ltd. vs. CIT 84 taxmann.com 195 (SC)** and relied on the order of Hon'able Apex Court. The issue was already dealt by the CIT(A) in his **order para5.5.5** which was already discussed above. We find no infirmity in the order of the Id. CIT(A). The Id. CIT(A) by speaking order was able to differentiate the factual content of the order of Hon'able Apex Court & assessee's case. So, the **grounds of the revenue from 1 to 5** are dismissed.

15. In the result, the appeal of the assessee bearing **ITA No. 480/Asr/2018** is allowed and appeal of the revenue bearing **ITA No. 479/Asr/2018** is dismissed.

Order pronounced in the open court on 13.10.2022

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

(1)The Appellant

- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order