

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "C" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA.No.6599/Del./2016  
Assessment Year 2006-2007

M/s. Havells India Limited, 1, Raj Narain Marg, Civil Lines, Delhi. PIN – 110 054. PAN AAACH0351E	vs.	The DCIT, Large Tax Payer Unit, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Rajat Jain, C.A. And Shri Akashat Jain, C.A.
For Revenue :	Shri Hemant Gupta, Sr. DR

Date of Hearing :	06.10.2022
Date of Pronouncement :	20.10.2022

**ORDER**

**PER ANIL CHATURVEDI, A.M. :**

This appeal filed by the Assessee is directed against the Order of the Ld. CIT(A)-22, New Delhi, dated 01.12.2016 in Appeal No.17/14-15/CIT(A)-22/New Delhi, relating to the A.Y. 2006-07.

2. Briefly stated facts of the case are that the assessee company is stated to be engaged in business of manufacturing of switchgears, energy meters, cables and wires, electrical fans, compact fluorescent lamp and related components and trading of luminaries lighting fixtures and exhaust fans. The assessee company had filed its original return of income for the A.Y. 2006-07 on 29.11.2006 declaring total income of Rs.35,80,32,828/-. The case of the assessee company was selected for scrutiny and thereafter, assessment was framed by the A.O. under section 143(3) of the I.T. Act, 1961 vide order dated 26.12.2008 determining the total income of assessee company at Rs.40,11,27,346/-. Thereafter, a notice under section 148 of the I.T. Act, 1961 was issued to the assessee company on 26.03.2013 and the assessee company was asked to file return of income, to which, the assessee company vide letter dated 12.04.2013 stated that the original return of income filed under section 139 of the I.T. Act, 1961 may be treated as return filed in response to notice under section 148 of the I.T. Act, 1961. Thereafter, the case of the assessee company was taken-up

for scrutiny and the A.O. completed the assessment under section 143(3) read with section 147 of the I.T. Act, 1961 vide order dated 27.03.2014 and the total income of the assessee company was determined at Rs.38,41,26,647/-.

2.1. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A), who vide order dated 01.12.2016 in Appeal No.17/14-15/CIT(A)-22/New Delhi, granted partial relief to the assessee company.

3. Aggrieved by the order of the Ld. CIT(A), the assessee is now in appeal before the Tribunal and has raised the following grounds :

1. *“That the impugned order of CIT (Appeals)-22, New Delhi is bad in law and wrong on the facts and in the circumstances of the case and legal position.*
2. *That on the facts and circumstances of the case and in law, the CIT (A) has erred in upholding the validity of order dated 01.12.2016 passed u/s 143(3) r.w.s. 147 of IT Act,*

1961, without appreciating that the order of AO was beyond jurisdiction, bad in law and void-ab-initio.

3. That on the facts and circumstances of the case and in law, the CIT (A) has erred in affirming the validity of the assessment order without appreciating:

a) That two notices u/s 148 were issued in the name of appellant Company and M/s Crabtree India Limited, the amalgamating Company.

b) That the notice u/s 148 issued in the name of Crabtree India Limited is in the name of a non-existent Company.

4. That the learned CIT (A) has erred in affirming the validity of assessment order without appreciating the fact that the notice issued u/s 148 is invalid, illegal, void- ab-initio, since conditions precedent for assuming jurisdiction u/s 147 has not been satisfied on the ground that:

a) The proceedings have been initiated after lapse of four years and there is not even an allegation that the appellant Company has not disclosed full and true all material facts necessary for assessment.

b) *The AO has failed in its duties, having recorded the satisfaction that the income chargeable to tax has escaped assessment and such escapement has occurred by reason of failure on the part of the appellant to disclose fully and truly all the material facts necessary for assessment.*

c) *The reopening of assessment by the AO is based on irrelevant, material/evidence.*

d) *There was no reason to believe for any escapement of income.*

e) *That the assessee has disclosed fully and truly all material facts necessary for assessment.*

5. *That on the facts and in the circumstances of the case and the legal position, the learned CIT (Appeals) has erred in confirming the addition of Rs.4,63,258/- on account of alleged accommodation entry from M/s Saraswati Trading Co.*

6. *That on the facts and in the circumstances of the case and the legal position, the learned CIT (Appeals) has erred in confirming addition a sum of Rs.35,43,393/- on account of alleged accommodation entries from the M/s Shree Balaji*

*International, M/s Shree Ganesh Enterprises and M/s Vee Vee Enterprises.*

*7. That the appellant, craves, leave to add/alter/delete/amend any ground(s) of appeal before or at the time of hearing.”*

4. Before us, the Learned Counsel for the Assessee proceeded to argue Grounds of Appeal Nos.5 and 6. It was submitted that both the grounds being interlinked can be considered together.

5. Ld. D.R. did not controvert the aforesaid submissions of Learned Counsel for the Assessee.

6. The brief facts relating to Grounds of Appeal Nos.5 and 6 are that the A.O. in the scrutiny assessment order passed under section 143(3) read with section 147 of the I.T. Act, 1961 noted that a search action was carried out in the case of Shri Navneet Kumar Jain and his son Shri Vaibhav Jain on 26.04.2010 wherein it was found that they were engaged in providing accommodation entries in the form of bogus sale bills through proprietorship concerns in

the name of the family members/employees. It was noted that assessee company had made bogus purchases from the concerns of Shri Navneet Kumar Jain and Shri Vaibhav Jain. The A.O. noted that assessee has stated to have made purchases of Rs.4,63,258/- from Saraswati Trading Company, Rs.11,22,624/- from Shri Balaji International, Rs.1,19,368/- from Shree Ganesh Enterprises and Rs.23,01,401/- from Vee Vee Enterprises and thus, A.O. noted the aggregate alleged purchases amounting to Rs.40,06,651/-. The assessee company was asked to justify and prove the purchases made. The assessee company filed the detailed explanation, which were not found acceptable to A.O. The A.O, accordingly treated the aggregate purchases amounting to Rs.40,06,651/- to be not genuine and made its addition Aggrieved by the order of A.O, assessee carried the matter in appeal before the Ld. CIT(A), who vide order dated 01.12.2016, upheld the order of A.O.

7. Aggrieved by the order of Ld. CIT(A), the assessee is now in appeal before us.

8. Before us, the Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that the purchases which have been disallowed by A.O. by treating it as bogus purchases were made by Crabtree India Ltd., which had got merged with the assessee company by virtue of Order passed by Hon'ble Delhi High Court under section 391 and 394 of Companies Act, 1956 in Company Petition Nos.49-50 of 2006 dated 03.05.2006 with effect from 01.04.2005. In support of his contention that company being amalgamated with the assessee company, he pointed to the copy of Hon'ble Delhi High Court order dated 03.05.2006 approving the Scheme of Amalgamation placed at pages 192 to 205 of the paper book. He, thereafter, submitted that these purchases were made by erstwhile Crabtree India Limited and in respect of the purchases, assessee company had filed the copy of bank statements of Crabtree India Limited wherein the payment made for the purchases were reflected. He submitted that assessee had also placed on record the copy of the Certificate issued by Assistant Commissioner of Commercial

Taxes Circle to prove the purchases made by the assessee company. He submitted that the A.O. did not accept the Certificate issued by Assistant Commissioner of Commercial Taxes for the reason that according to A.O. it only established the existence of the bill and its entry in the office records of Commercial Taxes Department of Rajasthan Government, but, did not establish that the entries were verified to be correct at the check post point with the goods and other details mentioned in the bill. The Learned Counsel for the Assessee thereafter pointed to the copies of the bills placed at page no.91 of the paper book which was the bill of Saraswati Trading Co. which was issued in the name of Crabtree India Limited, had the details about the vehicle number, buyers TIN No., CST No, description of the goods and also bore the stamp of the check post. He also pointed to the copy of the bank statement of Crabtree India Limited evidencing the payment made for the purchases made. He thereafter pointed to the copy of the Certificate issued by Commercial Taxes Department, Bhiwadi, Government of Rajasthan at page 176 of the paper book

which gives the details of the purchases made by the assessee company the bill number, items purchases and the amount involved. He also pointed to the copy of the Certificate issued by Commercial Taxes Department, Bhiwadi, Government of Rajasthan at page 177 of the paper book which certifies the purchases made from Saraswati Trading Co. He further pointed to the Certificate which certified that the bills were recorded in the books of the assessee company and was found correct. He thereafter pointed to copy of the ledger account placed at page no.118 of the paper book and bill-wise details which are placed at pages 124 of the paper book. He thereafter submitted that the genuineness of the certificates cannot be doubted without there being any evidence to the contrary on record. With respect to the observations of the A.O. that in the enquiries made under section 133(6) the selling concerns could not be located, he submitted that once the notices have been served under section 133(6), then, merely because those persons do not respond to the notice issued under section 133(6), cannot be the basis for treating the

transaction to be not genuine and for this proposition he placed reliance upon the decision of Hon'ble Punjab and Haryana High Court in the case of CIT, Faridabad vs., GP International Ltd., [2010] 186 Taxman 229 (Punjab & Haryana). He thereafter placed on record the copy of the working of gross profit and net profit ratio earned by the assessee during the year under consideration and from there he pointed that during the period under consideration the sales of the assessee was to the extent of Rs.1115,13,65,117/- and the gross profit declared by the assessee company is 28.37% and the net profit is 5.67%. He submitted that when the turnover of the assessee company is in excess of Rs.1000 crores, assessee would not be saving any significant amount by entering into bogus purchases/ transactions of Rs.40 lakhs odd. He, therefore, submitted that the addition made by the A.O. and upheld by the Ld. CIT(A) is not based on evidence and, therefore, the same be deleted.

9. On the other hand, the Ld. D.R. supported the orders of the lower authorities.

10. We have heard the Learned Representative of both the parties, orders of the authorities below and perused the material available on record. We find that in respect of the purchases made and to prove the genuineness of the purchases, assessee had placed on record copy of the bill which shows the bill number, vehicle number through which it was transported and it also bears the stamp of the check post. The assessee has also placed on record copy of the Certificate issued by the Commercial Taxes Department, Bhiwadi, Government of Rajasthan which evidences the purchases made by the assessee company. The conclusion of the A.O. that the Certificate issued by Commercial Tax Department evidencing the purchase of goods by the assessee is not based on any cogent evidence. No enquiry has been made by the A.O. to justify his conclusion that the bills are not genuine. When the bills were available with the A.O, he could have made necessary enquiries. We, therefore, find that the disallowance of purchases being not genuine as it is an accommodation entry, is not supported by any cogent reasons and is more in the nature of surmises and

conjectures. We also find force in the arguments advanced by the Learned Counsel for the Assessee that by entering into bogus purchases of Rs.40 lakhs when the turnover of assessee company is more than Rs.1000 crores, the assessee company would not gain significantly and there would not be much gain to the assessee company. As far as the contention of the Revenue about the parties not being found/responded to the notice issued under section 133(6) of the I.T. Act, 1961 is concerned, we find that apart from sending the notice, the A.O. did not undertake any other exercise to support his contention that purchases were bogus. We find the Coordinate Bench of Delhi Tribunal in the case of ACIT, Central Circle-7, New Delhi vs., M/s. Varun Beverages Ltd., New Delhi in ITA.No.865/Del./2015 order dated 26.09.2019 after relying on the decision of Punjab and Haryana High Court in the case of GP International Ltd., (supra) held that mere fact that certain parties did not respond to the enquiries made by the A.O. under section 133(6) would not by itself be sufficient to warrant addition of expenses in connection with which the

enquiries were made under section 133(6) of the I.T. Act, 1961. Considering the totality of the facts and circumstances of the case, we are of the view that A.O. was not justified in making the impugned addition. We, therefore, direct the A.O. to delete the addition made by him. Thus, **grounds of appeal Nos.5 and 6 of the assessee are allowed.**

11. The assessee challenged the validity of assessment framed under section 143(3) read with section 147 of the I.T. Act, 1961 through it's grounds of appeal nos.1 to 4 and (a) (b) (c) (d) and (e).

12. On these grounds, the Learned Counsel for the Assessee reiterated the submissions made before the authorities below.

13. The Ld. D.R. on the other hand supported the orders of the lower authorities.

14. We have heard the Learned Representative of both the parties and perused the material available on record. Since we have already decided on merits the issue

pertaining to addition on account of disallowance of purchases in favour of the assessee company hereinabove, we are of the view that these **grounds of appeal nos.1 to 4 and (a) (b) (c) (d) and (e) are mere academic in nature, which needs no adjudication and, therefore, not adjudicated.**

**15. In the result, appeal of the assessee is allowed.**

Order pronounced in the open Court on 20.10.2022.

Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER

Delhi, Dated 20<sup>th</sup> October, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'C' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.