

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1902/DEL/2020
Assessment Year: 2012-13

Renu Singhal, E-21-22, Dairy Road, Adarsh Nagar, New Delhi-110033. PAN- ABBPS4623B	<u>Vs</u>	Income-tax Officer, Ward-17(4), New Delhi
APPELLANT		RESPONDENT
Assessee represented by	Shri Varun Gupta, CA	
Department represented by:	Shri Sumesh Swani, Sr. DR	
Date of hearing	05.12.2022	
Date of pronouncement	23.12.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-12, New Delhi, dated 22.09.2020, pertaining to the assessment year 2012-13. The assessee has raised following grounds of appeal:

“1. On the facts and circumstances of the case and in law, the Assessing Officer erred in issuing notice u/s 148 of the Income Tax Act, 1961. The notice u/s 148 issued in this case is illegal, void and without jurisdiction and accordingly the assessment order passed on the foundation of such notice is liable to be quashed. The Ld. Commissioner of Income Tax (Appeal) should have held the reassessment proceedings as illegal, void and without jurisdiction

2. *On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeal) erred in confirming the addition made by the Assessing Officer of purchase of Rs. 15,75,000/- as alleged unexplained income u/s 69 of the Income Tax Act, 1961. The addition made by the Assessing Officer is not sustainable and Commissioner of Income Tax (Appeals) should have deleted.*

3. *On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeal) erred in confirming the addition of Rs. 31,500/- made by the Assessing Officer as alleged commission paid. The addition made by the Assessing Officer is not sustainable and Commissioner of Income Tax (Appeal) should have deleted the same*

4. *The alleged reasons given by Assessing Officer and CIT (A) for making/confirming the additions of Rs. 15,75,000/- and Rs. 31,500/- are erroneous, both on facts and in law and, therefore, the additions of Rs. 15,75,000/- and Rs. 31,500/- made by the Assessing Officer and confirmed by CIT (A) are liable to be deleted.*

5. *The additions made and the observations made are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record and additions are also excessive.*

6. *The explanation given in the evidence produced, material placed that has been made available on record has not been properly considered and judicially interpreted and the same do not justify the additions/allowances made.*

7. *That the assessee reserves the right to add, amend, alter the grounds of appeal.”*

2. Facts giving rise to the present appeal are that in this case the assessee filed her return of income declaring income of Rs. 5,29,200/- on 24.1.2013. The case was reopened u/s 147 of the Income-tax Act, 1961 (in short “the Act”) and the assessment u/s 143(3) read with section 147 of the Act was framed vide order

dated 2.12.2019. The basis of reopening of the assessment was that the Investigation Wing Delhi of the income-tax Department informed the Assessing Officer that M/s Radhika Trading Co., having its bank account with Yes Bank in which large number of debit/credit transactions were made. It was informed that the said entity was not doing any business except providing accommodation entries. It was found that the assessee had also entered into transaction with entity. After considering the material, the AO, therefore, treated the transaction with M/s Radhika Trading Co., as not genuine and hence made addition u/s 69 of the Act amounting to Rs. 15,75,000/- and further made addition of Rs. 31,500/-, the commission presumed to have been paid to such entity.

3. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions and material placed before him, dismissed the appeal. Thereby the addition made by the AO was sustained. Aggrieved against this, the assessee is in appeal before us.

4. Apropos to the grounds of appeal, learned counsel for the assessee reiterated the submissions as made in the written submissions. For the sake of clarity, the submissions of the assessee are reproduced below:

“Respectfully it is submitted that - Brief Facts of the case are as under :-

On the basis of information received from Investigation Department Notice

U/s 147 of The Income Tax Act 1961 , was issued on the allegation that appellant has taken Bogus purchased amounting to Rs 15,75,000/- from M/s Radhika Trading Co. , Case was assessed and addition of Rs 15,75,000/- along with 2% as commission was added , resulting in Present Appeal

Grounds of appeal :-

*The **first ground of appeal** is regarding the Validity of the reasons / re-assessment Proceedings :-*

That in view of facts and circumstances of the case and in law, the AO merely substituted the report of Dir (Inv) verbatim instead of any "Reasons to believe" purported to have been recorded by the AO, hence the notice u/s 148 is bad in law

That the Ld. CIT has granted the approval for reopening of the assessment in a mechanical manner and without due application of mind.

a)The Comments made by the JCIT / CIT are typed and printed by the Ld AO .

Hon JCIT and Pr CIT has just put their signature without applying their own mind on the performa typed by the assessing officer . They have not added even a single word excepts putting signatures

ii) All the Officer ie Ld AO, Hon JCIT and Pr CIT has signed on March 30, 2019 , which also leads to the conclusion that , it has been made mechanically without applying their mind

c)That the Id assessing officer has erred in Law and on facts in passing the assessment order on the date on which reasons for re-opening of the assessment proceedings were provided ,hence Conditions as required in case of GKN Drive Shaft (India) Ltd. Vs ITO and others (2003) 259 ITR 19 (SC) has not been meet out

*The Second and Third Ground of appeal is that CIT (Appeals) has erred on facts in confirming the additions made by Ld AO **Necessary Information as called for were provide . It was Bring to knowledge of Ld ITO that :-***

*During the financial year 2011-12, the assessee is duly **registered under DVAT and CST Act** and accounted all the purchases and sales made during the year. Also the firm **M/s Radhika Trading Co. is duly registered under DVAT and CST Act** and shown the corresponding sales to the assessee and*

paid due tax as per return. Also the **assessee is assessed by DVAT/CST Department** and the same Purchases from M/s Radhika Trading Co. are accepted by the Department after cross checking the records filed by the firm M/s Radhika Trading Co. Copy of Assessment order and **Copy of VAT returns filed by M/s Radhika Trading Co.** are also attached. Entire purchases made by the assessee have been found to be accounted by M/s Radhika Trading Co. Also.

There is no doubt that the assessee sold/consumed all the goods purchased. The **Purchases invoices** and the **sales invoices** are submitted, which in itself proves the purchases and delivery of goods. All purchases from M/s Radhika Trading Co. Are found to have been sold or consumed in the manufacturing process.

Further, there is no dispute that all the purchases from M/s Radhika Trading Co. Are duly supported by invoice and all the payments have been made either online or through account payee cheques. The purchases have duly been accounted by M/s Radhika Trading Co. **As per returns filed In DVAT Department and also in Income Tax Department.** All the transactions are recorded in books by the selling dealer also.

The **existence proof** of the firm M/s Radhika Trading Co. And **Identity proofs** of its Prop, are attached.

The Fourth ground of appeal is That On the facts and in the circumstances of the case, and in law, the Learned assessing officer has made , erred inter alia

in his order that the purchases made by the assessee were "bogus purchases", while not disputing by holding the sales made from these purchases, which are genuine and which were booked in the regular books of accounts and which were also verified by him from the assessment records in presence of the Learned AO

by consciously overlooking that the purchases were made by account payee cheques to these suppliers whose identity was established and no evidence has been produced by him for receipt of cash by the assessee as alleged by him in not considering the quantitative disposal statements of purchase made from these alleged bogus parties and sales there from, which was filed before him. as well as the Learned AO and which was also verified by him from the assessment records in presence of the Learned AO.

in not considering the fact that on the alleged bogus purchases , the

appellant has disclosed profits which is higher than the average rate of gross profit disclosed by the appellant;

It is further canvassed that the AO has ignored the documentary evidence available on record which established beyond doubt that the purchases were genuine and conclusion contrary to the facts before him has been drawn without bringing any material on record to support the conclusion made. The rejection of the documentary evidence on record by the AO it was stated is based on mere suspicions assumptions, conjectures and surmises. It was argued suspicion howsoever strong does not partake the character of evidence. Accordingly it was argued based upon the following judgments that the additions made on suspicions, surmises & conjectures deserve to be deleted:-

We hope your honour will find the above in order and will decide the case in our favour, however the appellant shall be pleased to furnish such other information as may be required by your honour in this regards.”

5. Learned DR opposed the above submissions and supported the orders of the authorities below. He contended that there was an information regarding bogus transactions by the assessee with one M/s Radhika Trading Co. Therefore, the Assessing officer was justified in reopening the assessment. He further submitted that the Assessing officer also made inquiry from M/s Radhika Trading Co., but no confirmation was given.

6. I have heard rival contentions and gone through the material available on record. So far the question of reopening of the assessment is concerned, we find that the reopening was based upon some information that suggested escapement of income. Therefore, the Assessing Officer was justified in reopening the

assessment. The case laws, as relied upon by the assessee would not help as in the present case it is not a case where the assessee had not entered the transaction with the party who had provided accommodation entries. Hence, the grounds taken against the validity of reassessment are dismissed.

7. Now coming to the merits of the addition, the contention of the assessee is that all purchases are supported by invoices and payments have been made either on-line or through account payee cheques. Purchases have been duly accounted by M/s Radhika Trading Co. as per the returns in DVAT Department and also Income-tax Department. The existence of such party was duly provided. It was further argued that it is not the case of the Assessing Officer that the sale made by the assessee was not commensurate with the purchases claimed by her. When the sale is not disturbed by the Assessing officer, how purchases would become bogus. The manufacturing cannot be in vacuum. Therefore, it was argued that the impugned addition deserves to be deleted.

8. Learned DR on the other hand, submitted that the Assessing Officer had carried out the enquiries which suggested that M/s Radhika Trading Co. was entry provider entity which was working on paper only. It is seen that the assessee had provided relevant documents relating to M/s Radhika Trading Co.. However, no material has been placed on record suggesting that such entity was not in existence

and the evidences furnished by the assessee were not reliable on account of being bogus. In the absence of such material the impugned addition cannot be sustained.

Therefore, the Assessing Officer is directed to delete the addition.

9. Appeal of the assessee stands partly allowed accordingly.

Order pronounced in open court on 23rd December, 2022.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**