

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 910/DEL/2020
Assessment Year: 2007-08

M/s Neha Metals, Prop. Sunil kumar Singhal, 2249-50, Bagichi Raghunath Dass, Sadar Bazar, Delhi-110006	<u>Vs</u>	Income-tax Officer, Ward-63(3), New Delhi.
PAN- AGKPS7759L		
APPELLANT		RESPONDENT
Assessee represented by		Shri Aman Garg, CA
Department represented by:		Shri Sumesh Swani, Sr. DR
Date of hearing		08.12.2022
Date of pronouncement		05.01.2023

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-35, New Delhi, dated 24.12.2019, pertaining to the assessment year 2007-08. The assessee has raised following grounds of appeal:

1. *On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, learned CIT(A) has erred*

both on facts and in law in confirming the order of the AO rejecting the contention of the assessee that reopening the assessment under Section 147 of the Act and consequent reassessment without complying with the statutory conditions and the procedure prescribed under the law are bad and liable to be quashed.

3. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the order of the AO rejecting the contention of the assessee that the reasons recorded for reopening the assessment does not meet the requirements under section 147 of the Act, bad in law and are contrary to the facts.*

4. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the reopening ignoring the fact that there is no live nexus between the reasons recorded and the belief formed by the assessing officer.*

5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming action of the AO despite that assessment order having been framed on the basis of material collected at the back of the assessee, without providing adequate opportunity to the assessee to rebut the same in violation of statutory provision of section 142(3) of the Act.*

6. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the order passed by the AO despite the fact that reopening the assessment proceedings as well as re-assessment order passed under section 148 of the Act are illegal, as the same have been made without assumption of valid jurisdiction.*

7. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the reassessment proceedings initiated by the learned AO without obtaining approval of the prescribed authority under the Act is bad in law and liable to be quashed.*

8. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law, in confirming the addition of Rs.1,49,056/- made by the AO on account of purchases made by the assessee treating the same as unexplained expenditure invoking the*

provision of section 69C of the Act.

(ii) That the addition has been confirmed at an arbitrary rate of 10% of purchases made by the assessee without there being any basis for the same.

(iii) That the abovesaid addition has been confirmed rejecting the detailed explanation and evidences brought on record by the assessee in this regard.

(9) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee in ignoring the fact that the quantity purchased and sold being completely tallying, the allegation that the assessee has not made purchases cannot be sustained.

10. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the addition on account of bogus purchases, despite there being adequate material and evidences brought on record by the assessee before the AO to show that the purchases and sales are genuine and have been made in the regular course of business.

11. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the addition without providing an opportunity to cross examine the person on the basis of whose statement the allegations have been made against the assessee and without following the principles of natural justice.

12. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the above addition by indulging in surmises and conjectures only on the basis of presumptions and assumptions.

13. The appellant craves leave to add, amend or alter any of the grounds of appeal.

2. Apropos to the grounds of appeal, learned counsel for the assessee at the outset submitted that the issue in dispute is squarely covered by the decision of the

coordinate Benches of the Tribunal and the Division Bench. Learned counsel further reiterated the submissions made in the synopsis. For the sake of clarity, the synopsis is reproduced as under:

“1. This is an appeal filed by assessee against the order passed by the learned CIT(A) whereby he has upheld the action of the Assessing Officer in reopening the assessment under section 148 of the Act and on merit has confirmed of Rs 1,49,056/- at the rate of 10% of the total addition of Rs. 14,90,563/- made by the AO on account of purchases made by assessee from M/s Shree Bankey Bihari Trading Co, Shree Shyam Trading Co. & Vishnu Trading Co.

2. It is submitted that similar cases have also been heard before this Hon'ble Tribunal involving verbatim reasons, similar arguments and similar findings. These cases are also being relied upon, which are as under:

Unique Metal Industries v. ITO in ITA No. 1372/Del/2015 dated 28.10.2015

M/s Radhay Shyam and Co. vs ITO in ITA No. 1429/Del/2015 dated 30.11.2015 before SMC-1 Bench.

M/s Kishan Lai Gambhir & Sons v. ITO in ITA No.1516/Del/2015 dated 02.12.2015 before 'F' Bench

M/s Kakkar Bartan Store v. ITO in ITA No. 1380/Del/2015 dated 23.03.2016

M/s Krishan Lai & Sons v. ITO in ITA No. 1379/Del/2015 dated 23.03.2016

M/s Laxmi Dhatu Bhandar v. ITO in ITA No. 1369/Del/2015 dated 23.03.2016

M/s Karshni Metal Store v. ITO in ITA No. 1365/Del/2015 dated 23.03.2016

M/s Kashmir Metals v. ITO in ITA No. 1366/Del/2015 dated 23.03.2016

M/s Bhardwaj Metal (India) v. ITO in ITA No. 1370/Del/2015 dated

23.03.2016

M/s Nayar Metal Co. v. ITO in ITA No. 1374/Del/2015 dated 31/03/2016

Neeraj Rathore Prop. M/s Anjli Metal Overseas and Rajiv Jain Prop. M/s Rajeev Metal Trading Co. v. ITO in ITA No. 059/Del/2017 And ITA No:- 7061/Del/2017 dated 27.09.2018

Jyoti Engineering Works, Sadhna Sharma, Ajay Sharma v. ITO in ITA No. 2719/Del/2018, ITA No. 2720/Del/2018, ITA No. 2721/Del/2018, ITA No. 2722/Del/2018 And ITA No. 2723/Del/2018 dated 26.09.2018

Rajender Prasad Prop. M/s Priya Enterprises v. ITO in ITA NO-7060/DEL/2017 dated 07.09.2018

M/s Sapra Metal Co. v. ITO in ITA No. 2910/Del/2016 dated 09.3.2017

Therefore, in view of the above, the addition made by the Ld. AO and sustained by the Ld. CIT(A) is liable to be deleted.”

3. Learned DR opposed the submissions and supported the orders of the authorities below.

4. I have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. I find that in the case of Babulal khandelwal Vs. ITO (ITA no. 196/Del/2021) identical grounds were raised and similar submissions were also made by the assessee. The coordinate Bench after considering the submissions, vide order dated 24.06.2022 has decided the issue by observing as under:

“10. I have heard the rival contentions of the parties. I find merit into the contention of Ld. Counsel for the assessee that the identical issues were raised by the assessee in ITA No.1367/Del/2015 for AY 2006-07 and

Division Bench of this Tribunal in para Nos. 10 to 12 has decided the issue in favour of the assessee. For the sake of clarity, para Nos. 10 to 12 of the aforesaid order reproduced as under:-

10. “On careful consideration and vigilant perusal of the orders of the Tribunal including that of the Unique Metal Industries (supra), we observe that the AO had recorded similarly worded reasons and name of the parties from whom the assessee alleged to have made bogus purchases were also same except the amount mentioned therein in the reasons recorded in the tabular form, as in the case of the present assessee. We, therefore, respectfully following the above decisions of the Tribunal in the case of Unique Metal Industries (supra), hold that the initiation of reassessment proceedings as well as issuance of notice u/s 148 of the Act was not valid and the same was void ab initio and thus, liable to be quashed along with assessment order passed in pursuance thereto. Accordingly, Ground Nos. 2 and 3 of the assessee are allowed.

11. Now coming to the merit about the sustenance of the addition by the CIT(A) @ 20% of the purchases made by the assessee from M/s Vishu Trading Company, & M/s Om Agencies., after hearing the rival submissions and going through the order of the Tribunal, we note that this Tribunal vide its order dated 28.10.2015 in the case of Unique Metal Industries (supra), deleted similar addition by observing in para 27 as under:

“27. As regards the addition of 20% sustained by the Id. CIT(A) I am of the view that since purchases are not bogus the addition on this account cannot be sustained. Even otherwise the addition of 20% on the facts and circumstances is apparently too high. The Id. CIT(A) having held that tax has to be levied on real income and the profit cannot be ascertained without deducting the cost of purchases from the sales as otherwise it amount to levy of tax on gross receipt, she ought to have applied’ profit rate in this nature of trade. Estimating profit @ 20% by taking into consideration the or visions of section 40A(3) will not lead to determination of correct real income. Section 40A(3) is meant for a different purpose when the assessee has made purchases in cash. This provision cannot be applied in such cases. Once the purchases are held to be

bogus then the trading results declared by the assessee cannot be accepted and right course in such case is to reject books of accounts and profit has to be estimated by applying a comparative profit rate in the same trade. Though there can be a little guess work in estimating profit rate but such profit rate cannot be punitive. ”

12. *The Id. DR could not bring to our notice any cogent or relevant material or evidence which may lead us to take a different view and not to follow the decision of the co ordinate benches of the Tribunal in the case of Unique Metal Industries (supra) and other relevant orders. We, therefore, respectfully following the decision of the Tribunal in the case of Unique Metal Industries (supra), whereby the addition of 20% of the purchases sustained by the Id. CIT(A) has been deleted in the identical facts and circumstances of the case, are not inclined to sustain the similar addition in the instant case. Consequently, the grounds of the assessee on merits are also found covered in favour of assessee by the aforesaid decision and are accordingly allowed. ”*

11. *The facts are identical and similar grounds have been raised by the assessee in the appeal for AY 2007-08. The Revenue has not brought to my notice any other binding precedent. Therefore, respectfully flowing the decision of the Division Bench rendered in ITA No.1367/Del/2015 for AY 2006-07. I hereby, direct the AO to delete the impugned addition. Thus, grounds raised by the assessee in this appeal are allowed.*

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

5. Since the identical facts and grounds have been taken, therefore, following the binding precedents and for the same reasoning the issues raised on merit are allowed and the impugned addition is directed to be deleted.

6. In the result, appeal of the assessee stands allowed.

Order pronounced in open court on 5th January, 2023.

**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**