

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय शर्मा, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Dr. Manish Borad, Accountant Member and Shri Sonjoy Sarma, Judicial Member

I.T.A No.567/Kol/2020
Assessment year: 2010-11

Sanjay Transport Agency..... Appellant
41, N.S.B. Road,
Raniganj – 713347.
[PAN: AAVFS6659N]

vs.

ACIT, Circle-3(1), Asansol..... Respondent

I.T.A No.633/Kol/2020
Assessment year: 2010-11

ITO, Ward-3(1), Asansol..... Appellant

vs.

Sanjay Transport Agency..... Respondent
41, N.S.B. Road,
Raniganj – 713347.
[PAN: AAVFS6659N]

Appearances by:

Shri Anil Kochar, Adv., & Shri Aryan Kochar, CA, appeared on behalf of the appellant.
Shri Vivek Verma, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 10, 2023

Date of pronouncing the order : March 13, 2023

आदेश / ORDER

मनीष बोरड, लेखा सदस्य द्वारा / Per Manish Borad, Accountant Member:

The above captioned appeal for assessment year 2010-11 filed by the assessee and cross appeal filed by the Revenue are directed against the order of Id. Commissioner of Income Tax (Appeals), Asansol both dated 22.09.2020 are arising out of the order u/s 143(3) of the Income Tax Act 1961 (hereinafter referred to as the 'Act').

2. The assessee in ITA No.567/Kol/2020 has taken the following grounds of appeal:

“1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.

2. For that the Ld. CIT (A) erred in confirming the disallowance at the rate of 20% of the total claim made on account of purchase of HEMM Spare parts/Repairing charges on estimate.

3. For that in the absence of any irregularity in accounts detected in the course of Survey operation u/s 133A, books of accounts could not be rejected on whims to make addition on estimate basis.

4. For that the Ld. CIT (A) erred in confirming the disallowance at the rate of 20% of the total expenditure incurred through sub-contractors on estimate.

5. For that in the absence of any irregularity in accounts detected in the course of Survey operation u/s 133A, books of accounts could not be rejected on whims to make addition on estimate basis.

6. For that at any rate the estimation towards disallowances of expenditure was wrong & uncalled for and/or otherwise high & excessive.

7. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

2. The revenue in cross-appeal in ITA No.633/Kol/2020 has taken the following grounds of appeal:

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in reducing the disallowance of repairs and maintenance expenses claimed while it was found that parties who engaged in these repairs and maintenance works were non-existent?

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in reducing the disallowance of expenses made for contract while it was established that there was no contract papers between the assessee and the parties?

The appellant craves leave to make any amend, addition, alteration, modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings.”

3. The brief facts of the case are that the assessee is a partnership firm engaged in the business of mining contractor and transporter. A survey operation u/s 133A of the Act was conducted on 26.03.2010. A profit and loss account on the date of survey was printed out from the computer installed in the office of the assessee and the same has been reproduced in the assessment order, wherein, the assessee has offered additional income at Rs.17047290/-. Thereafter, return of income for assessment year 2010-11 e-filed on 14.10.2010 declaring income at Rs.68,44,270/-. The case selected for scrutiny under CASS followed by serving of notices u/s 143(2) and 142(1) of the Act. During the assessment proceedings, the ld. Assessing Officer enquired about the purchases made by the assessee as well as sub-contract expenses incurred on transportation etc. The ld. Assessing Officer thereafter also discussed the net profit rate offered by other assessees in similar kind of business and finally arrived at a conclusion that the expenses and purchases to the tune of Rs.2,69,47,417/- deserves to be disallowed and along with other minor additions of Rs.28,598/- assessed income at Rs.3,38,20,285/-.

4. Aggrieved, the assessee preferred appeal before the ld. CIT(A), who after considering the submissions of the assessee *prima facie* did not dispute the expenses incurred by the assessee on purchases and other expenses towards forestation and stone picking and observed that without incurring such expenses, the contract cannot be discharged. The ld. CIT(A) also observed that there is no dispute about sales/revenue disclosed by the assessee. However, by giving a general finding that some of the expenses could not be substantiated fully by the assessee, therefore, sustained the addition to the extent of 20% of the additions made by the Assessing Officer.

4.1 Thus, against the disallowance of purchases made by the Assessing Officer at Rs.1,62,45,056/-, the ld. CIT(A) sustained the addition at Rs.32,49,011/- observing as follows:

“The contentions of the appellant and the assessment order have been carefully perused. During the course of appeal proceedings, the appellant produced a copy of the agreement entered into with Jharkhand State Minerals Development Corporation. At para-2 under the head 'Items of Work' the agreement states as under:-

"Removal of soil (soft and hard top soil) sandstone, shale, coal etc. by deploying Heavy Earth Moving Machines and stacking of coal top soil and OO B separately up to a distance of about 1.50 or more in the non coal zone as specified by JSMDC and back filling the excavated area including afforestation thereof."

It is seen that the appellant is dealing in mining activities since 2007 with Jharkhand State Minerals Development Corporation. They have been assigned to do the job of removal of soil, sand stone, soil (soft and hard top soil), coal etc. by deploying heavy earth moving machines as per the agreement entered into by the appellant with Jharkhand State Minerals Development Corporation. Hence, the agreement itself envisages that Heavy Earth Moving Machines have to be deployed for the removal of soft and hard soil, coal etc.. The appellant has stated that these machines required repairs and maintenance. The appellant has stated that it owned some machines & some were taken on hire. The appellant has produced details of HEMM machines, the purchase invoices of these machines costing Rs.3.80 crores. It is seen that some of these machines are quite very old and have been used for more than ten years and the appellant has incurred an expenses of Rs.55,88,804/- on the repairs and maintenance of these machines. The appellant has also purchased a number of heavy dumpers costing Rs.4.24 crores and Rs.1.69 crores, loaders worth Rs.13.79 lakhs and HEMM dozers worth Rs.7.43 lakhs. Many of these machines have been bought as far as back as 1985, 1986, 1983, 2003, 2004 & 2000.

Hence, it cannot be denied that the appellant had purchased its own HEMM and other machines and have also used hired machines to do the job of excavation. It also cannot be denied that these machines are used in far flung, tough terrains and many of these machines were quite old. Hence, they were in need of regular repairs and maintenances. The fact cannot be denied that these heavy equipments were required to be used and these heavy equipments require repairs and maintenances for undertaking the job as per the contract. Thus, the Assessing Officer has been wrong in deleting the entire amount of repairs and maintenance amounting to Rs.1,62,45,056/-. However, the Assessing Officer had made certain enquiries, in which the suppliers of

these spare parts etc. could not be tracked. It is seen that all the payments have been made in cheque and bills for purchase have been issued by the suppliers. The issue is that a certain amount of these expenses may be unsubstantiated but it cannot be stated that the entire amount of expenses are bogus because as per the agreement between the appellant and the Jharkhand State Minerals Development Corporation, the appellant was required to use these heavy equipments. So the entire expenses cannot be disallowed and only a certain portion of the same may be disallowed. In view of this I estimate that 20% of the expenses incurred by the appellant is unsubstantiated in nature and deserves to be added back to the income of the appellant. Hence, appeal to the extent of Rs.32,49,011/- is not allowed. Hence, appeal is partly allowed.”

4.2 Further against the disallowance of expenses of Rs.1,09,02,361/- made the Assessing Officer, the ld. CIT(A) sustained the addition only to the extent of 20% calculating at Rs.21,80,472/- observing as follows:

“The assessment order and the submission of the appellant have been carefully perused. During the course of appeal proceedings, the appellant produced a copy of the agreement entered into with Jharkhand State Mineral Development Corporation. At para-2 under the head 'Items of Work' the agreement states as under-

"Removal of soil (soft and hard top soil) sandstone, shale, coal etc. by deploying Heavy Earth Moving Machines and stacking of coal top soil and OO B separately up to a distance of about 1.50 or more in the non coal zone as specified by JSMDC and back filling the excavated area including afforestation thereof. The excavated earth excluding top soil would be deposited in layers no more than 300 mm thick and consolidated properly at the specified place and in the case of coal it has to be stacked separately at the specified place (usually coal dump yard) up to a distance of 1.50 kilometre or more from the face of the quarry. The top soil would be stacked separately for spreading over the overburden back fill/external over burden dump Work includes back filling of the de-coaled area as per environmental stipulations and planting of trees in the said area Back filling and reclamation activities shall be carried on simultaneously with the progress of mining activities as per the specific direction of JSMDC. The work includes maintenance of quality control by hand picking of stone & foreign material from coal. The work also includes the maintenance of the plant in the reclaimed area for three years.

As per the agreement entered by the appellant with Jharkhand State Minerals Development Corporation dt. 01.9.2004, it has been mentioned in "Items of Work" that the appellant has to remove soft and hard top soil, sand stone, shale, coal and stack coal, top soil and over burden (OB) separately up to a distance of 1.5 kms in the non-coal zone as specified by JSMDC and back fill the excavated area including afforestation thereof. The manner in which all these works have to be done and the technical details of the job have been mentioned in the contract.

Hence, from the above, it is observed that contract was in respect of removal of soil, shale etc, stacking of coal up to a distance of 1.5 k.ms or more from the quarry, stacking of soil and over burden separately, maintenance of quality control by hand picking of stones and foreign materials from coal, afforestation work and fill up the dug up area as per environmental stipulations. All these information are there in the agreement entered into between the two parties. Hence, the prime job of the appellant was removal, stacking, filling up and afforestation for which the appellant was paid the contractual amount. Hence, all these activities had to be carried out by the appellant as they were fundamental to the agreement and in respect of these works, the appellant was paid by JSMDC. Hence, it cannot be denied that all these activities had to be performed by the appellant for which it was duly paid. For carrying out all these activities, the appellant had to incur all kinds of necessary and relevant expenditure and it is observed that it has been mentioned specifically in the agreement also that labours have to be engaged for hand picking of stone and foreign materials from coal. Thus, it cannot be denied that the appellant had to incur any expenditure in respect of stone picking and stacking expenses, forestation expenses, over burden removal expenses as per the terms of the contract. Thus, the Assessing Officer was wrong in deleting the entire amount of expenses worth Rs.1,09,02,361/-.

However, it cannot be denied that the Assessing Officer made certain investigations and the incurring of all these expenses cannot be proved fully to the satisfaction of the Assessing Officer. The Assessing Officer had desired the submission of the names and addresses of the labours who were engaged in these mining works. In activities of this kind, the names and addresses of casual labours are never mentioned and noted down. They are in the nature of daily wage earners and payments to them are made in cash as is the general practice. Hence, it is very harsh and unrealistic on the part of the Assessing Officer to state that since the names and addresses of the casual labours have not been mentioned or could not be properly substantiated, hence, the entire expenses was bogus. Without incurring these expenses the contract cannot be discharged. However, it cannot be denied that certain expenses could not be fully substantiated by the appellant. Thus, it would be fair to disallow only a portion of the expenses so incurred. In

view of this I estimate that 20% of the expenses amounting to Rs.21,80,472/- as bogus. Thus, appeal to the extent of Rs.21,80,472/- is disallowed. Hence, appeal is partly allowed.”

5. Aggrieved both assessee and revenue are in appeal before this Tribunal challenging the findings of the Id. CIT(A) against the relief not granted.

6. The Id. counsel for the assessee submitted that the books of account are regularly maintained and duly audited. Net profit percentage in the immediately preceding financial year i.e. F.Y 2008-09 was 0.5% and for the year under appeal, net profit declared is 3.03% and in subsequent year 2.39% is declared. Reference was also made to the decision of this Tribunal in assessee's own case for assessment year 2008-09, wherein, also similar types of additions were made alleging the genuineness of expenditure/trade creditors. However, Hon'ble Tribunal decided in favour of the assessee. Further, the Id. counsel for the assessee referring to the paper-book containing 142 pages stated that the case of the assessee stands assessed u/s 143(3) of the Act for assessment year 2009-10 and so far as the claim of expenditure towards purchase and other expenses are concerned, the same was not disputed by the revenue authorities. Reference was also made to the assessment order for assessment year 2011-12 placed at page 140-142 of the paper-book, wherein, also book results declared by the assessee has been accepted. Further, it was submitted that all the purchases are duly supported with the purchase invoices, payments are made through account payee cheques and mostly through banking channel, TDS wherever applicable have been deducted and deposited. Prayer was made that the book result declared by the assessee may be accepted and the addition sustained by the CIT(A) may be deleted.

7. On the other hand, the ld. Departmental Representative vehemently argued in support of the order of the Assessing Officer. We took us to various observations made by the Assessing Officer.

8. We have heard rival contentions and perused the record placed before us. We observe that the ld. Assessing Officer, during the course of the assessment proceedings u/s 143(3) of the Act for assessment year 2010-11, which were carried out after the survey operation u/s 133A of the Act conducted on 26.03.2010, has gone through the profit and loss account filed by the assessee in the course of survey operation as well as audited financial statement filed in the course of assessment proceedings and came to the conclusion that the assessee has claimed bogus expenditure towards purchase of spare parts at Rs.1,60,45,056/- and bogus sub-contract expenses at Rs.1,09,02,361/-. Further, we notice that ld. CIT(A) after examining the facts of the case on one hand did not dispute the type of expenditure incurred by the assessee towards purchase of spare parts and sub-contract expenses but, on the other hand, made an *ad hoc* disallowance of 20% of the alleged addition made by the Assessing Officer.

8.1 We notice that in the course of appellate proceedings before the CIT(A), the assessee has given complete details of the expenditure on spare parts as well as the machines purchased for the purpose of carrying out contractual work and relevant extract of the said details is reproduced below:

<i>Name of Machines (HEMM)</i>	<i>Cost of the Machine</i>	<i>year of purchase</i>
<i>(a) Volvo Crawler Excavator</i>	<i>1,27,92,000.00</i>	<i>30.09.2009</i>
<i>(b) L & T Model 170CK</i>	<i>56,00,000.00</i>	<i>15.12.2000</i>
<i>(c) L&T Excavator</i>	<i>75,42,377.00</i>	<i>02.08.2003</i>

(d) HEML Excavator	39,88,776.00	31.03.1999
(e) HEML 220LC Excavator	38,78,160.00	31.03.1997
(f) L&T PC 200-6 Excavator	42,59,520.00	12.03.1999
Total cost of machines	3,80,60,833.00	

Note: Parts amounting to Rs.(9,67,200.00+410228.00+567320.00+553280.00+1001520.00+1044160.00+1045096.00)

Total Rs. 55,88,804.00 used for repairs during the year under review. From above this is very clear that these are very old and costly machines and used under very difficult situations. (HEMM purchase invoices and repairs bills are attached separately)

(VIII) Heavy Dumpers stands in the name of Our Firm

Name of Machines (Dumper)	Cost of the Machine	Year of purchase
(a)TIL Limited (Invoice No.IM5200000063)	76,57,520.00	06.05.2005
b)TIL Limited(Invoice No. IM5200000064)	76,57,520.00	06.05.2005
(c)TIL Limited(Invoice No.IM100000423)	90,48,000.00	13.02.2009
(d)TIL Limited(Invoice No.IM100000420)	90,48,000.00	07.02.2009
(e)TIL Limited(Invoice No.IM100000419)	90,48,000.00	07.02.2009

Total cost of machines **4,24,59 040.00**

Note: Parts amounting to Rs. (20,16,102.00+ 10,36,880.00)

Total Rs.30,52,982.00 used for repairs during the year under review. From above this is very clear that some of these are very old and costly machines and used under very difficult situations.

(IX) Heavy Dumpers stands in the name of Our Firm

Name of Machines (Dumper)	Cost of the Machine	Year of purchase
(a) Hindustan Motors LTd. (Inv. No.010143)	30,28,208.00.00	15.12.2000
(b) Hindustan Motors LTd. (Inv. No.010144)	30,28,208.00.00	15.12.2000

(c) TIL Limited (Invoice No. IM 5200000016)	48,47,405.00	24.12.2004
(d) TIL Limited (Invoice No. IM100000017)	48,47,405.00	27.12.2004
(e) Two Second Hand Dumper	11,50,000.00	04.12.2003
Total cost of machines	1,69,01,226.00	

Note: Parts amounting to Rs. (10,98,240.00+15,18,920.00+978640.00+1071200+1086800)

Total Rs. 57,53,800.00 used for repairs during the year under review. From above this is very clear that these are very old and costly machines and also two of above dumpers are purchased second hand.

(X) Other HEMM used stands in the name of Our Firm

Name of Machines (Loader)	Cost of the Machine	year of purchase
(a) Hindustan Motors Ltd. (Inv. No. PRO/101)	12,00,000.00	03.01.1986
(b) Arun & CO	1,79,000.00	04.04.1986

Total cost of machines 13,79,000.00

Note: Parts amounting to Rs.7,61,280.00

The machines are very old, around 25 years old and needs heavy repairing. "

9. Similarly, with regard to sub-contract, justification about genuineness of the expenditure was stated in the following manner:

"During the course of the appeal proceedings, the appellant stated as under:-

At para 2 page 10 and onwards the AO had dwelled upon the issue of expenditure incurred towards:

Stone picking and staging expenses:	Rs 48, 86,100/-
Forestation expenses:	Rs 18, 38,561/-
Overburden removal expenses:	Rs 44, 77,700/-
Total	Rs.1,09, 02,361/-

and which has been disallowed in full without specifically pointing out the defects in the details and evidences submitted by the appellant.

The appellant has furnished full details of such payments to the AO. Since these expenditures were made on the contract work at Sikni Site and through sub-contractors or hiring the AO had alleged that this being in violation of the agreement entered into with JSMD Corporation Ranchi the expenditure is not an allowable one.

The AO, however, made extensive enquiries and the crux of the case is that according to him on the basis of the agreement no sub-contracting or hiring is allowed. The appellant replied to the charges levelled and which is reproduced at page 11 of the order of assessment. The AO however has reproduced the applicable clauses of the agreement and has harped heavily on the same. He failed to understand that even if assuming but not admitting there is any breach of agreement in between the principal and the appellant contractor the same has nothing to do with the Income Tax Proceedings. Laws governing the Income Tax Act has to be fully complied with and there is no such infringement pointed out by the AO in this regard. The statements recorded of various payees have been recorded and designed in such a way so as to confuse them in respect of simple transaction.

At para 2.6 the AO had concluded that no sub contract work of stone picking, stacking and forestation has ever been done by the sub-contractors and the appellant himself has done this work. This in other word means that the AO has accepted the work having been done and when it has been done then definitely the payments ought to have been made/ incurred for the same and debited in the accounts. In that case the expenses so incurred is an allowable one.

To further clarify about these expenditures we are enclosing ANNEXURE -2 herewith for your kind reference.

To conclude it is submitted as under:

- 1. The survey proceedings conducted u/s 133A by the Income Tax department was bad in law having not been conducted in a proper manner as laid down by the CBDT vide file No. 414/105/2008-IT(Inv-1).*
- 2. That no paper/document/evidences were found and impounded during the course of survey proceedings and has been termed as incriminating.*
- 3. That the DDI report and other evidences collected and used in the assessment proceeding at the back of the appellant without affording an opportunity to cross examine those persons/evidences is an error fatal to the assessment proceeding.*

4. That no infringement of law has been found during survey proceeding and or detected.

5. That the case laws relied upon by the AO dates back to 1950 and on facts has got no relevancy with the facts of the case.

6. That no entries which can be said to be incriminating have been found out in the computer.

7. That a summary of profit and loss account for two proceeding years and subsequent year giving the amount of contractual receipt and NP are enclosed.

8. If the amount of Rs 26947417 is considered as additional income then the profit percentage will 18.01% whopping sum keeping in view the past records of the appellant where almost all the assessments have been completed u/s 143(3) of the Act and the profit percentage ranges from 2.5% to 3.5%.

9. The AO has tried to make out his case for addition relying solely on the assessee statement recorded w/s 131 which does not have any evidentiary value as held in the case of S Khader Khan (2008) 300 ITR 157 (MAD) and affirmed by the Hon'ble Supreme Court in Civil Appeal No. 13224 of 2008 and 6747 of 2012 dated 20-09-2012.

10. With regard to stone picking and staging expenses, Forestation Expenses and Overburden removal expenses which have been disallowed in full, complete details of the same for the assessment years: 2009-10 & 2011-12 are enclosed.

In none of the years involved no amount was disallowed in the scrutiny assessment.

11. Copies of assessment orders for the assessment years 2009-10 & 2011-12 passed u/s 143(3) are enclosed.

To conclude it the prayer of the appellant that the additions/disallowances so made by the Assessing Office being illegal and bad in law, in the facts and circumstance narrated earlier deserves to be deleted."

(A) Regarding Stone picking and staking, afforestation and Overburden removal (O.B) expenses.

1. That this if for your kind information of your honour, that we get our payment from JSMDC only after the sale of materials.

2. That as per our agreement with JSMD C dated 1 November 2004 (Copy of the agreement attached herewith) we have to bring out the coals and make it for salable condition.

3. That as per point no 2 of the agreement in page no 4 of the agreement this is specifically mentioned that, this is again reproduced herewith as follows (Copy of agreement with JSMD C attached herewith)

Item/items of Work

"Removal of soil (soft and hard top soil) sandstone, shale, coal etc. by deploying Heavy Earth Moving Machines and stacking of coal top soil and O.B. separately up to a distance of 1.50 or more in the non coal zone as specified by JSMD C and back filling the excavated area including afforestation."

Conclusion: All the three expenses as disallowed find specific mention in the agreement with JSMD C and the same are to borne by our firm. Hence this expenses as reflected in our accounts should be allowed.

In view of the above facts and circumstances of the case we request your honour to kindly drop the addition and for your this act of kindness your petitioner shall ever pray."

10. Further, we notice that ld. CIT(A) has considered the submissions of the assessee and did not doubt the genuineness of the type of expenditure incurred by the assessee and without finding any specific defect in these details, sustained the disallowance @20% observing as follows:

"However, it cannot be denied that the Assessing Officer made certain investigations and the incurring of all these expenses cannot be proved fully to the satisfaction of the Assessing Officer. The Assessing Officer had desired the submission of the names and addresses of the labours who were engaged in these mining works. In activities of this kind, the names and addresses of casual labours are never mentioned and noted down. They are in the nature of daily wage earners and payments to them are made in cash as is the general practice. Hence, it is very harsh and unrealistic on the part of the Assessing Officer to state that since the names and addresses of the casual labours have not been mentioned or could not be properly substantiated, hence, the entire expenses was bogus. Without incurring these expenses the contract cannot be discharged. However, it cannot be denied that certain expenses could not be fully substantiated by the appellant. Thus, it would be fair to disallow only a portion of the expenses so incurred. In

view of this I estimate that 20% of the expenses amounting to Rs.21,80,472/- as bogus. Thus, appeal to the extent of Rs.21,80,472/- is disallowed. Hence, appeal is partly allowed.”

11. The above finding of the Id. CIT(A) that the expenditure have been incurred towards purchase of spare parts and sub-contract expenses remained unrebutted by the Id. Departmental Representative. The disallowance made by the Id. CIT(A) is merely *ad hoc* in nature. Sales/gross receipts are not disputed at any stage and for achieving the same assessee needs to incur expenditure. It is also brought to our notice that for assessment year 2008-09 in assessee's own case similar type of disallowances of the purchases and expenses were made and this Tribunal after considering the facts of the case, regularly books of account maintained by the assessee, deleted the said disallowances and for necessary reference, the relevant observations of this Tribunal in ITA No.1627/Kol/2011 dated 20.11.2015 are reproduced below (Para 4, Para 9 and Para 10):

“4. We have heard rival submissions and gone through facts and circumstances of the case. We find that, admittedly, these are trade creditors and not unsecured loans. The assessee has filed complete details including purchase bills, payment made by cheque and confirmation along with the names and addresses and their assessment details to the AO during the course of assessment proceedings. All the parties have confirmed these purchase transactions but the AO wanted their creditworthiness. These are simply trade creditors and all of them supplied machinery to the assessee. Supply of machinery is not in doubt. These are not unsecured loans. Once this is the position, the AO cannot invoke the provisions of section 68 of the Act. All the parties have confirmed having made sales to assessee in response to notice u/s. 133(6) of the Act. In the case of trade creditors, at the best, first of all, the AO has to doubt the purchases and sales and without going into these facts, the AO applied the provisions of section 68 of the Act in the absence of creditworthiness of these parties and made addition. We find no reason to sustain the same, as the very basis is not doubted by the AO, and assessee has discharged its onus by filing all the details before the AO. Accordingly, we confirm the order of CIT(A) and this issue of revenue's appeal is dismissed.

9. We have heard rival submissions and gone through facts and circumstances of the case. We find that the assessee claimed to have made purchase from following three parties:

<i>Sl. No.</i>	<i>Name of the person</i>	<i>Amount of transaction entered during the year (Rs.)</i>	<i>Misc</i>
<i>1</i>	<i>Vishal Enterprises</i>	<i>36,62,361</i>	<i>No evidence of creditworthiness/ third party evidence is filed. Not even confirmation is filed by the party although it was mentioned in the letter that the confirmation is enclosed.</i>
<i>2</i>	<i>Nandi Ispat Corporation</i>	<i>36,64,024</i>	<i>No evidence of creditworthiness/ third party evidence is filed.</i>
<i>3</i>	<i>Goodwill Agencies</i>	<i>13.15.322</i>	<i>No evidence of creditworthiness/ third party evidence is filed.</i>

The AO required the assessee to explain the purchase made with evidence. According to Assessing Officer, no evidence has been filed recording the veracity of the transactions and accordingly he added the same. The CIT(A) deleted the addition by observing as under:

"Perusal of the assessment order reveals that the A.O. has discounted evidence that these parties are assessed to sales tax and the payments to them, during the year have been made by account payee cheques. In his view, these are circumstantial evidence. But, in that event, it appears that the appellant has indeed provided such evidence. Evidence, whether primary or circumstantial, cannot be brushed aside summarily. No enquiry is on record, as per the assessment order, wherein the A.O. could have been said to have negated even this circumstantial evidence. As per the A.O. only primary evidence in the nature of return of income/ balance sheet/P&I. account is acceptable as evidence of creditworthiness and none of these have been filed by the appellant in respect of these parties. The A.O. states that his view is based on the pronouncements of various Courts including the Hon'ble Supreme Court. If the A.O. states that his stand, that, even where confirmations of purchase transactions are available on record, a buyer has to, suto moto, produce IT Returns/ Balance Sheets P&L accounts of the seller as proof of such sellers' creditworthiness, is based on judicial decisions then citations of such judicial decisions become necessary. However, no such

citation has been given. In this case, in my opinion, if the A.O. felt that primary evidence of the creditworthiness was lacking. I do not see what prevented him from raising further queries. The addresses and the PA Nos. of these parties were available with him. Yet, for reasons best known to him, he is not seen to raise any further queries with these parties. He has mentioned in the order that purchase bills/mode of transportation of these purchases have not been produced. However, the appellant claims that necessary details including bills, VAT & PAN had been filed in the course of assessment proceedings. In fact, in the ultimate analysis the A.O. is not seen to doubt the identities of these parties.

The disallowances are seen to have been made for lack of proof of creditworthiness of the sellers. The A.O. has mentioned that one of the parties. M/s Vishal Enterprises did not name its own suppliers so as to verify the veracity of its replies. However, in that case, I do not see why the A.O. did not raise further queries. As admittedly, the assessment details of these parties were available with him he could have made internal enquiries also. None of this appears to have been done. In my opinion, once evidence is produced before the A.O. he has to act upon it and prove through enquiries that facts are contrary to such evidence. Without doing so, he cannot brush them aside. In this case, even the A.O. admits that circumstantial evidence has been provided. Under the circumstances, in my opinion, the appellant has charged its primary onus. If the A.O. doubted the creditworthiness of the parties, he should have made his own enquiries regarding them. Without doing so, in my view, he cannot doubt their creditworthiness and disallow the appellant's claim of purchases. The disallowances are directed to be deleted. This ground of appeal is allowed"

10. We find from the above facts and circumstances of the case that the assessee has filed confirmation from the parties from whom purchases were made and also details transaction as are available on record and even now before us i.e. purchase bills, payment by cheque and these party's I.T. Details. Despite the fact that these details are available before the Assessing Officer, the Assessing Officer has not carried out any further enquiry on the basis of these evidence and straightway made addition on unverifiable purchases. From the order of CIT(A) we find that complete details were available before him and on the basis of the same he has allowed the claim of the assessee. Even the sales arising out of the same purchases have not been doubted by the AO. Here in the present case only exception is M/s. Vishal

Enterprises wherein it has not verified the veracity of the transaction. Hence qua this only, we set aside the matter to the file of the AO so that assessee can prove the veracity of the transaction and for the balance purchases, we confirm the order of CIT(A) and this issue of revenue's appeal is partly allowed.

12. Further, we also observe that the books of accounts of the assessee are regularly audited and a chart has been filed by the assessee for assessment years 2009-10, 2010-11 & 2011-12 giving details of gross receipts, GP rate and net profit rate as follows:

<i>Asstt. Year</i>	<i>2009-2010</i>	<i>2010-2011</i>	<i>2011-2012</i>
<i>Gross Receipts</i>	<i>15,65,22,962/-</i>	<i>18,59,24,895/-</i>	<i>17,28,60,274/-</i>
<i>Interest Income</i>	<i>19,29,128/-</i>	<i>11,94,387/-</i>	<i>10,30,628/-</i>
<i>Direct Expenses</i>	<i>12,13,78,174/-</i>	<i>14,41,16,885/-</i>	<i>13,22,21,214/-</i>
<i>% to Gross Receipts</i>	<i>77.54</i>	<i>77.51</i>	<i>76.49</i>
<i>Net Profit from Business</i>	<i>8,48,773/-</i>	<i>56,49,885/-</i>	<i>41,24,394/-</i>
<i>% to Gross Receipts</i>	<i>0.54%</i>	<i>3.03%</i>	<i>2.39%</i>

13. After considering all the above discussion, relevant findings of the ld. CIT(A), decision of this Tribunal in assessee's own case for assessment year 2008-09, gross profit rate and net profit rate for immediately preceding financial years, current year and subsequent financial year and also the complete documentary evidence put forth before us to prove the genuineness of the expenditure towards spare parts and sub-contract expenses in question, we find that the assessee has shown a better net profit rate during the year which is 3.03% as compared to the net profit rate of 0.5% in the immediately preceding financial year which was also subjected to scrutiny proceedings and duly assessed u/s 143(3) of the Act. Also the subsequent assessment year i.e. 2011-12 was also subjected to scrutiny assessment and the Assessing Officer in the assessment order u/s 143(3) dated 19.03.2014 has examined the books of account

of the assessee and accepted the net profit percentage of 2.39%. We, therefore, hold that ld. Assessing Officer was not justified in making the addition of Rs.1,60,45,056/- towards bogus purchase and Rs.1,09,02,361/- towards bogus expenditure. Further, we hold that ld. CIT(A) erred in sustaining the addition by making *ad hoc* disallowance without specifying any defect in the books of accounts and records maintained by the assessee. We thus set aside the findings of the ld. CIT(A) sustaining *ad hoc* disallowance and delete the total additions of Rs.2,69,47,417/- made by the Assessing Officer. Thus, grounds of appeal raised by the assessee are allowed and that of the Revenue are dismissed.

14. In the result, the appeal of the assessee is allowed and the cross-appeal of the revenue is dismissed.

Kolkata, the 13th March, 2023.

Sd/-
[संजय शर्मा /Sonjoy Sarma]
न्यायिक सदस्य /Judicial Member

Sd/-
[मनीष बोरड / Manish Borad]
लेखा सदस्य /Accountant Member

Dated: 13.03.2023.

RS

Copy of the order forwarded to:

1. Sanjay Transport Agency
2. ACIT, Circle-3(1), Asansol
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches