

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI**

**BEFORE**

**DR. BRR KUMAR, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA Nos. 7579, 7580, 7581 & 7582/Del/2018  
Asstt. Years: 2010-11, 2011-12, 2013-14 & 2014-15

Three C Universal Developers Pvt. Ltd. C/o Sanjiv Sapra & Associates LLP, C-763, New Friends Colony, New Delhi – 110 025. PAN AACCT6175E (Appellant)	Vs.	ACIT, Central Circle-6, New Delhi.          (Respondent)
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Assessee by:	None
Department by:	Shri H.K. Chaudhary, CIT-DR
Date of Hearing:	03.04.2023
Date of pronouncement:	01/05.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The four appeals filed by the assessee are directed against the consolidated order of the Ld. Commissioner of Income Tax (Appeals)-24 (**"CIT(A)"**) dated 27.09.2018 pertaining to the Assessment Years (**"AYs"**) 2010-11, 2011-12, 2013-14 & 2014-15. Since common issues are involved in all the appeals, these were heard together and are being disposed of by this common order.

2. The assessee has taken the following grounds:-

**ITA No. 7579/Del/2018**

- “1. That the Ld. CIT(A) ought to have cancelled/quashed the assessment order dated 31/03/2016 as framed u/s 153A r.w.s. 143(3) of I.T. Act since the assessment for the year under consideration stood completed prior to the date of search and no incriminating material relating to alleged bogus purchases was found during such search.
2. That the Ld. CIT(A) has erred both in law and on facts for sustaining an addition of Rs. 1,61,84,376/- being 12.5% of alleged bogus purchases of Rs. 12,94,34,506/- (wrongly taken as Rs. 12,94,75,010/- by CIT(A) because no incriminating material concerning such addition was found during the course of search and further no assessment for such year was pending on the date of search.
3. That without prejudice to Ground No. 1 & 2 above, the addition out of alleged bogus purchases as sustained/confirmed by the Ld. CIT(A) is very excessive.
4. That the levy of interest u/s 234A and 234B is illegal and at any rate, without prejudice, the interest as charged is very excessive.”

**ITA No. 7580/Del/2018**

- “1. That there was no justification on the part of Ld. CIT(A) for sustaining/confirming an addition of Rs. 36,84,376/- being 12.5% of alleged bogus purchases of Rs. 2,94,75,010/-.
2. That without prejudice to Ground No. 1 above, the addition out of alleged bogus purchases as sustained/confirmed by the Ld. CIT(A) is very excessive.
3. That the levy of interest u/s 234A ad 234B is illegal and at any rate, without prejudice, the interest as charged is very excessive.”

**ITA No. 7581 /Del/2018**

- “1. That the Ld. CIT(A) has erred in law and on facts for sustaining/confirming an addition of Rs. 56,421/- on account of alleged bogus purchases.
2. That without prejudice to Ground No. 1 above, the addition out of alleged bogus purchases as sustained/confirmed by the Ld. CIT(A) is very excessive.”

**ITA No. 7582/Del/2018**

- “1. *That there was no justification on the part of Ld. CIT(A) for sustaining/confirming an addition of Rs. 93,22,352/- being 12.5% of alleged bogus purchases of Rs. 7,45,78,816/-.*
2. *That without prejudice to Ground No. 1 above, the addition out of alleged bogus purchases as sustained/confirmed by the Ld. CIT(A) is very excessive.”*

3. Hearing was fixed for 27.10.2021, 31.03.2022, 27.06.2022, 06.10.2022 and 03.04.2023. None appeared for and/or on behalf of the assessee company. The Ld. DR, however, was present on all the above dates of hearing. We, therefore, proceed to decide the appeals ex-parte on merits after hearing the Ld. DR.

4. It is a case of search. Search and seizure operation under section 132 of the Income Tax Act, 1961 (**the “Act”**) was conducted on Three C Group on 29.10.2013 and the assessee company was also covered in the search. Notice under section 153A of the Act was issued on 23.12.2014. In response thereto, the assessee filed return on 30.09.2015 declaring income of Rs. 9,34,17,240/-; Rs. 19,37,86,600/-; Rs. 70,34,86,650/- for AY 2010-11, AY 2011-12 and AY 2013-14 respectively. For the AY 2014-15, notice under section 142(1) of the Act was issued on 23.12.2014. The assessee submitted a copy of return filed on 30.11.2014 declaring income of Rs. 39,22,37,340/-.

5. During assessment proceedings, the Ld. Assessing Officer (**“AO”**) found that the assessee made purchases from the following parties in AY 2010-11, 2011-12, 2013-14 and 2014-15 which according to him remained unverified:-

S.No.	Name of the party	AY 2010-11 Rs. in Lakhs	AY 2011-12 Rs. in Lakhs	AY 2013-14 Rs. in Lakhs	AY 2014-15 Rs. in Lakhs
1.	M/s. Baba Traders	231.41	96.5		
2.	M/s. Royal Enterprises	443.75	198.25		
3.	M/s. Shalu Enterprises	219.01			
4.	M/s. Star Trading Co.	343.61			
5.	Rohit Enterprises			0.56	0.11
6.	Amit Builder	56.54			
7.	Arihant				745.68
	Total	1294.34	294.75	0.56	745.79

5.1. Accordingly, the Ld. AO held that the assessee had made bogus purchases and added Rs. 12,94,34,506/-; Rs. 2,94,75,010/-; Rs. 56,421/- and Rs. 7,45,78,816/- in AY 2010-11, 2011-12, 2013-14 and 2014-15 respectively recording the following common findings in para 5 of the assessment order:

*“5. In view of the above discussion, it is evident that the assessee has not been able to establish the genuineness of transaction with these parties either during post, search inquiries or assessment proceedings. These parties have been found to non-existent a. their known addresses both during post-search inquiries and assessment proceedings. Non-existence at their business premises makes ,t c that these parties were not capable o, entering in to transactions with the assesses Further, even the assessee has not been able to produce them so as to establish their capability of supplying goods/ senses to the assessee. It is re-emphasized payment through banking channels cannot make a non-genuine transaction genuine Thus, it is held that the transaction with the parties (as tabularized below) is non- genuine and not incurred wholly and exclusively for business purpose,”*

6. Aggrieved, the assessee filed appeal before the Ld. CIT(A). During the appellate proceedings, the assessee took the following additional grounds:-

*“The Ld. AO has erred in law and facts of the case in assuming jurisdiction to assess the assessee and has also erred in confirming the additions which are*

*outside the scope of assessment under section 153A of the Act, consequent upon the search which is bad in law.”*

6.1 The Ld. CIT(A) after obtaining comments of the Ld. AO admitted the additional ground which according to him is based on a pure law point and no new facts are required to be brought on record, following the judgment of the Hon’ble Supreme Court in National Thermal Power Ltd. vs. CIT 229 ITR 383 (SC).

6.2 It was contended by the assessee that there was no incriminating material found during the search and therefore assumption of jurisdiction under section 153A of the Act was not as per law.

6.3 The Ld. CIT(A) however, recorded the finding that in the peculiar facts and circumstances of the assessee’s case, the above contention of the assessee could not be accepted. His findings are recorded in para 5.2 of his appellate order which we reproduce hereunder:-

*“5.2 As such, there is no quarrel with the preposition that if there is no incriminating material found during the search, as per the ratio of Hon’ble Delhi High Court laid down in the cases of CIT v. Kabul Chawla [2016], 380 ITR 573 (Delhi) and Pr. CIT V. Meeta Gutgutia [2017] 395 ITR 526 (Delhi) assumption of jurisdiction is not possible u/s 153A. However, whether any incriminating material related to a particular assessment year was unearthed during the search, is a pure question of fact. This question is to be decided in each and every case based on peculiar facts and circumstances of that very case. In the present case, the AO has clearly stated that bills, vouchers related to these parties were not found during the search. It was stated that the same would be produced later on (copies of these bills were submitted as additional evidences before the undersigned but as stated above the same were not admitted). Also, during the post search enquiries, these parties could not be located. Therefore, it is difficult to agree with the preposition put forward by the AR- The material found during the search need not, always, to be positive. Even, negative findings in certain cases would constitute, “incriminating material”. The non-genuineness of these parties were indicated during the search by not finding bills/vouchers of these parties. The post enquiries about genuineness of these parties certainly emanates from the circumstances which were noted as a result of the search & seizure action.”*

6.4 It may not be out of place to mention that the assessee sought to introduce additional evidence in the form of copies of certain purchase bills/invoices from the parties. After obtaining comments of the Ld. AO and hearing the AR of the assessee, the Ld. CIT(A) declined to admit them by observing that the above documents were certainly available with the assessee during assessment stage. Apparently, there was no difficulty in producing them. The assessee did not support its argument of being prevented by 'sufficient cause'.

7. Coming to the merits of the impugned additions in all the years, the Ld. CIT(A) summarised the main contention of the assessee in para 6.2 of the appellate order. Relying on the principles of law enunciated by the Hon'ble Supreme Court in State Bank of India vs. S.K. Sharma AIR 1996 (SC) 364 and the decision of Hon'ble Gujarat High Court in Bholanath Polyfab Pvt. Ltd. 355 ITR 290 (Guj.), the Ld. CIT(A) recorded the finding that not having doubted the consumption/sales, the motive behind obtaining bogus bills, thus appears to be inflation of purchase price so as to suppress true profits. Accordingly, he estimated the suppressed profits to the extent of 12.5% of the alleged bogus purchases. This resulted in confirmation of addition to the extent of Rs. 1,61,84,376/-; Rs. 36,84,376/- ; Rs. 56,421/- and Rs. 93,22,352/- in AY 2010-11, 2011-12, 2013-14 and 2014-15 respectively.

8. Aggrieved, the assessee is in appeal before the Tribunal.

9. We have heard the Ld. DR. As observed earlier, the assessee remained unrepresented. We have perused the records and thoroughly gone through the orders of the Ld. CIT(A)/AO.

10. Ground No. 1 in AY 2010-11 relates to challenge of jurisdiction of the Ld. AO under section 153A of the Act on the ground that no incriminating material was found during the search. This issue has been decided by the Ld. CIT(A) against the assessee. Para 5.2 of his appellate order extracted earlier refers. Since the findings of the Ld. CIT(A) remain uncontroverted by

the assessee, we decline to interfere and endorse the findings of the Ld. CIT(A). This ground is rejected.

11. Ground No. 2 and 3 in AY 2010-11, Ground No. 1 and 2 in AY 2011-12, Ground No. 1 and 2 in AY 2013-14 and Ground No. 1 and 2 in AY 2014-15 relate to confirmation of addition by the Ld. CIT(A) to the extent of Rs. Rs. 1,61,84,376/-; Rs. 36,84,376/-; Rs. 56,421/- and Rs. 93,22,352/- in AY 2010-11, 2011-12, 2013-14 and 2014-15 respectively. The Ld. CIT(A) took notice of the findings given by the Ld. AO in the assessment order, considered the contentions raised by the assessee before him, distinguished the decisions relied upon by the assessee on facts and reached the conclusion that it is a case of inflation of purchase price so as to suppress true profits and accordingly estimated such profits @12.5% of the alleged bogus purchases made by the assessee in the AYs under consideration. The findings of the Ld. CIT(A) are contained in para 6.21 to 6.27 of his appellate order which we hereunder reproduce:-

*"6.21 To sum up, I would like to quote the landmark case of State Bank of India v. S.K. Sharma AIR 1996 SC 364 where the Hon'ble Apex Court observed :*

*"Justice means justice between the parties. The interest of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the end of justice. They cannot be perverted to achieve from opposite end."*

*6.22 In Bholanath Polyfab Pvt. Ltd. 355 ITR 290 (Guj), the facts of the case were that the assessee was engaged in the business of trading in finished fabrics. For the AY 2005-06, The Assessing Officer held that the purchases worth Rs. 40,69,546/- were unexplained. He, therefore, disallowed such expenditure claimed by the assessee and computed the total income of Rs.41,10,187/-. The issue was carried in appeal by the assessee before the Ld. CIT(A) who rejected the appeal, upon which the assessee went in further appeal before the Hon'ble Tribunal. The Hon'ble Tribunal substantially allowed the assessee's appeal. In so far as the question of bogus purchase is concerned, the Hon'ble Tribunal concurred with the Revenue's views that such purchases were made from bogus parties. The Tribunal noted that the Assessing Officer had*

issued notice to all parties from whom such purchases were allegedly made. Such notices were returned unserved by the postal authorities with the remark that the address was incomplete. Tire Inspector deputed by the Income-tax Department also could not find any of the parties available at the given addresses. The assessee was unable to produce any confirmation from any of the parties. Though the assessee had claimed to have made payment by account payee cheques, upon verification it was found that the cheques were encashed by some other parties and not by the supposed sellers.

6.23 Having come to such a conclusion, however, the Tribunal was of the opinion that the purchases may have been made from bogus parties, nevertheless, the purchases themselves were not bogus. Tire Tribunal adverted to the, facts and data on record and came to the conclusion that the entire quantity of opening stock, purchases and the quantity manufactured during the year under consideration were sold by the assessee. Tire purchases of the entire 1,02,514 meters of cloth were sold during the year under consideration. The Hon'ble Tribunal, therefore, accepted the assessee's contention that the finished goods were purchased by the assessee, may be not from the parties shown in the accounts, but from other sources. In that view of the matter, the Tribunal was of the opinion that not the entire amount, but the profit margin embedded in such amount would be subjected to tax. The Tribunal relied on its earlier decision in the case of Sanket Steel Traders vs. ITO [IT appeal Nos. 2801 & 2937 (Ahd) of 2008, dated 20-05-2011] and also made reference to the Tribunal's decision in the case of Vijay Proteins Ltd. vs. Asstt.CIT [1996] 58 ITD 428 (Ahd). On appeal by the Department, the Hon'ble Gujarat High Court held as follows:

"We are of the opinion that the Tribunal committed no error. Whether the purchases themselves mere bogus or whether the parties from whom such purchases mere allegedly made mere bogus is essentially a question of fact. The Tribunal having examined the evidence on record came to the conclusion that the assessee did purchase the cloth and sell the finished goods. In that view of the matter, as natural corollary, not the entire amount covered under such purchase, but the profit element embedded therein would be subject to tax. This was the view of this Court in the case of Sanjay Oilcake Industries vs. CIT (2009) 316 ITR 274 (Guj.). Such decision is also followed by this Court in a judgment dated August 16, 2011, in Tax Appeal No. 679 of 2010 in the case of CIT vs. Kishor Amrudlal Patel. In the result, tax appeal is dismissed".

6.24 The facts in the present case are similar to the facts in the above mentioned case. In the present case, the AO has shown that the party in question was non-genuine. The appellant has not been able to disprove the findings of the AO regarding the non-genuineness of the parties.

However, AO after examining the evidences did not give any adverse finding that tire appellant had not shown consumption/sales of the goods and that it had not offered the income on such sale of goods. Proper weight is required to be given to the arguments of the AR mentioned in para 6.2, above. It is certain that there are evidences to indicate that receipt/consumption of material cannot be doubted. This is also a fact that the AO has not found any fault with the books of accounts which are audited. It is also an important fact that GP ratio of this assessment year works out to be 15.28% whereas much lower GP ratio (12.56%) has been accepted in the A.Y. 2012-13. In this case, A.O. not having doubted the genuineness of receipt and consumption of the material could not have gone ahead and made addition in respect of the entire purchases as it would lead to absurd profits. Thus, the issue would boil down to finding out the element of suppressed profit embedded in purchases which the appellant would have made from some unknown or bogus entities. Hence, following the decision or the Hon'ble Gujarat High Court in *Bholanath Polyfab Pvt. Ltd. (supra)*, the estimated suppressed profit margin embedded in such amounts of purchases could only be disallowed and subjected to tax.

6.25 Similarly, in yet another decision of Hon'ble Gujarat High Court in the case of *CIT vs. Simit Sheth (2013) 38 Taxmann.com 385 (Guj)*, Hon'ble Court was seized with a similar issue where the A.O. had found that some of the alleged suppliers of steel to the assessee had not supplied any goods but had only provided bills and hence, purchases from the said parties were held to be bogus. The A.O. in that case added the entire amount of purchases to gross profit of the assessee. *Ld. CIT(A)* having found that the assessee had indeed purchased though not from named parties but other parties from grey market, partially sustained the addition as probable profit of the assessee. *Tire Tribunal* however, partly sustained the addition. Taking into account the above facts, the Hon'ble Gujarat High Court held that since the purchases were not bogus, but were made from parties other than those mentioned in books of accounts, only the profit element embedded in such purchases could be added to the assessee's income and as such no question of law arose in such estimation. While arriving at the above conclusion, the Hon'ble Court also relied on the decision in the case of **Vijay M. Mistry Construction Ltd. 355 ITR 498 (Guj)** and further approved the decision of **Ahmedabad Bench, ITAT in the case of Vijay Proteins 58 ITD 428.**

6.26 In the case of **Vijay Proteins (supra)**, the Hon'ble ITAT was seized with a case of bogus suppliers of oil cakes where 33 parties were found to be bogus by the departmental authorities even though payments were made to the said parties by cross cheques and in fact the A.O. in that case had brought adequate material on record to prove that the cross cheques had not been given to parties from whom supplies were allegedly procured but these were encashed from a bank

*account in the name of another entity, possibly hawala dealer. Subsequently, the money deposited in that account was withdrawn in cash almost on the same day. The Tribunal however, held that if the purchases were made from open market without insisting for genuine bills, the suppliers may be willing to sell the product at a much less rate as compared to a rate which they may charge in which the dealer has to give genuine sale invoice in respect of that sale. Keeping all such factors in mind, the Tribunal estimated an element of profit percentage of the overall purchase price accounted for in the books of accounts through fictitious invoices.*

*6.27 As narrated earlier, the A.O. in this case has held that the parties from whom the purchases were made by the appellant were found to be non-genuine. Although, the AO has not dealt with the case of getting Job-work done from M/s Amit Builder as that of Job-work but clubbed it with the cases of purchases from non-genuine parties, however, that does not make material difference. Crux of the matter remains that these parties are non-genuine. As mentioned in para 6.24 above, there are evidences to support the contention of the AR that the corresponding material was received and consumed and the corresponding job-work was job done. As such AO has not adversely commented on this aspect. In fact, the AO has not found any fault with the books of accounts which are audited. It is also an important fact that GP ratio of this assessment year works out to be 15.28% whereas much lower GP ratio (12.56%) has been accepted in the A.Y. 2012-13. Not having doubted the consumption/sales, the motive behind obtaining bogus bills thus, appears to be inflation of purchase price so as to suppress true profits.”*

12. On the facts and in the circumstances of the assessee's case, we are inclined to agree with the observations and findings of the Ld. CIT(A). In our view, there is nothing in the order of the Ld. CIT(A) requiring our intervention. Accordingly, we reject these grounds of the assessee in all the AYs involved.

13. Ground No. 4 and Ground No. 3 in AY 2010-11 and 2011-12 relate to levy of interest under section 234A and 234B of the Act which are consequential in nature.

14. In the result, all the four appeals of the assessee for AYs 2010-11, 2011-12, 2013-14 & 2014-15 are dismissed.

**Order pronounced in the open court on 1<sup>st</sup> May, 2023.**

**sd/-  
(DR. BRR KUMAR)  
ACCOUNTANT MEMBER**

**sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 01/0/2023

**Veena**

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4. CIT (A)
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ASSISTANT REGISTRAR  
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