

IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "A" NEW DELHI ]

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं .I.T.A Nos. 4117 TO 4123/Del/2018  
निर्धारण वर्ष/Assessment Years: 2008-09 TO 2011-12

M/s. Brahmaputra Infrastructure Ltd. [Formerly known as Mewar Industries Ltd.] Brahmaputra House, A-7, Mahipalpur, New Delhi - 110 037.	<u>बनाम</u> Vs.	DCIT,  Central Circle : 15,  New Delhi.
PAN No. AAACM0525D		

A N D

आ.अ.सं .I.T.A No. 5123/Del/2018  
निर्धारण वर्ष/Assessment Year: 2010-11

DCIT, Central Circle : 15, New Delhi.	<u>बनाम</u> Vs.	M/s. Brahmaputra Infrastructure Ltd. [Formerly known as Mewar Industries Ltd.] Brahmaputra House, A-7, Mahipalpur, New Delhi - 110 037.
		PAN No. AAACM0525D
अपीलार्थी/ Appellants		प्रत्यर्थी/ Respondents

निर्धारितकीओरसे / Assessee by :	Shri Gautam Jain, Adv.; & Ms. Monika Agarwal, Adv.;
राजस्वकीओरसे / Department by :	Shri P. Praveen, [CIT] - D. R.;

सुनवाईकीतारीख/ Date of hearing :	25.05.2023
उद्घोषणाकीतारीख/Pronouncement on :	31.05.2023

**आदेश / O R D E R**

**PER BENCH :**

1. All these appeals are filed by the assessee of same group for various assessment years from 2008-09 to 2011-12 against different orders of ld. Commissioner of Income Tax (Appeals)-35 [hereinafter referred to CIT (Appeals)] New Delhi and the Revenue has filed appeal for the assessment year 2010-11 in the case of assessee, namely, Brahmaputra Infrastructure Ltd. Since the issues are common in all these appeals, they are disposed of by way of this common order for the sake of convenience.

2. First we take up the appeals of the assessee, namely, Brahmaputra Infrastructure Ltd. in ITA. Nos. 4119, 4121 and 4123/Del/2018 for the assessment years 2009-10, 2010-11 and 2011-12.

3. The ld. Counsel for the assessee, at the outset, submits that in all these three appeals the assessee is not pressing ground Nos. 1 to 1.4 which challenge the notice issued under section 153A and the consequential assessment made under section 143(3) read with 153A of the Income Tax Act, 1961 (the Act). Similarly the ld. Counsel submits that assessee is not pressing ground No. 2 of grounds of appeal which challenge the approval obtained under section 153D of the Act being mechanical and invalid approval and consequential

assessment is invalid. In view of the submissions by the Id. Counsel for the assessee ground Nos. 1 to 1.4 and ground No. 2 are dismissed as not pressed.

4. Ground Nos. 3 & 5, 4 & 5 and 4 & 5 of the appeal for assessment years 2009-10, 2010-11 and 2011-12 are directed against sustaining the addition of Rs.1,80,815/-, 2,45,908/- and Rs.35,809/- respectively on account of purchases made by the assessee.

4.1 Briefly stated the facts are that in the course of assessment proceedings the Assessing Officer noticed that the assessee has claimed expenses on account of purchases related to infra projects. Assessee was required to establish identity, creditworthiness of the vendors. Notices were also issued under section 133(6) of the Act to vendors by the Assessing Officer. Some of the vendors have also responded to the notices issued under section 133(6) of the Act by the Assessing Officer. Since the assessee has not produced the parties for verification and did not file confirmation copy of ledger account from the vendors the Assessing Officer disallowed purchases from certain vendors as mentioned in the assessment order and made addition of Rs.45,58,538/-, Rs.36,11,273/- and Rs.55,32,299/- for the assessment years 2009-10, 2010-11 and 2011-12 respectively.

4.2 On appeal the Id. CIT (Appeals) considering the submissions and evidences on record placed by the assessee deleted the addition to the extent of Rs.43,77,723/-, Rs.33,65,365/- and Rs.54,96,490/- and sustained the balance expenses/purchases of

Rs.1,80,815/-, Rs.2,45,908/- and Rs.35,809/- in respect of the vendors, namely, Narayani Trading Company, Kalyan Singh and Sirazuddin Gitty Suppliers for the assessment years 2009-10, 2010-11 and 2011-12 respectively.

4.3 Before us the ld. Counsel for the assessee submits that in spite of the various evidences filed by the assessee in the form of copy of TIN of suppliers for the purpose of identity and existence of the business concern, copy of ledger account in the books of assessee company, copy of bank payment vouchers and bank statements and the details of payments made to the vendors in subsequent years, copy of bills and vouchers, copy of invoices and purchase order, copy of ledger account counter-signed by the vendors, the ld. CIT (Appeals) sustained the disallowance in respect of these three vendors observing that no PAN number, no address proof, no ITR was filed. The ld. Counsel submits that the ld. CIT (Appeals) is not justified in sustaining the purchases only because the assessee has not filed PAN, ITR, counter-signed copy of ledger account even though the assessee has filed various other evidences to prove the identity and genuineness of the purchases made by the assessee.

5. The ld. DR submits that since the assessee did not produce the parties for verification the Assessing Officer doubted the identity and genuineness of the purchases made by the assessee.

6. Heard rival submissions perused the orders of the authorities below. We observe that in the case of the vendor, Narayani Trading Company the ld. CIT (Appeals) sustained the addition made

observing that there is no PAN number, no address proof, no ledger account counter-signed by the vendor, no ITR copy and, therefore, addition is sustained. We observe that assessee filed copy of TIN of the supplier for the purpose of identity and existence of the business concern. Assessee also filed copy of ledger account in the books of the assessee company for the period from 1.04.2008 to 31.03.2010, copy of bank payment voucher and bank statement reflecting the payments through banking channels. Assessee also filed details of payment in subsequent years along with copies of bills and vouchers. All these evidences cannot be brushed aside while treating the purchases as non-genuine. The reason for treating the purchases as non-genuine is the assessee has not produced PAN number, no address proof, no counter-signed ledger account. The assessee in fact filed copy of TIN of the supplier to prove the identity and existence of business concern. Therefore, in our view simply because the assessee has not filed PAN, copy of ITR, these purchases cannot be treated as non-genuine.

7. In the case of Shri Kalyan Singh the only ground on which the addition was sustained by the Id. CIT (Appeals) was that the assessee has not deducted the TDS, even though the assessee has furnished copy of ledger account in the books of the assessee company, copy of vouchers and bank statements, copy of ledger for the financial year 2010-11, copy of vouchers and ledger details in respect of the work done by the vendors. Non-deduction of TDS cannot be a ground for treating the purchases as non-genuine.

8. Similarly in the case of Sirazuddin Gitti Supplier the addition was sustained by the ld. CIT (Appeals) for the reason that the assessee has not mentioned any TIN, did not file copy of ITR, PAN, confirmation ignoring the copy of bank statement, copy of ledger account in the books of assessee company, copy of invoices, purchase orders. The vendor here had supplied stone dust, a construction material with weigh bridge challans and invoices.

9. Therefore, in view of the above we hold that there is no justification in sustaining the additions by the ld. CIT (Appeals) in respect of purchases/expenses from the above parties. Thus, we direct the Assessing Officer to delete the addition/disallowance sustained by the ld. CIT (Appeals) at Rs.1,18,815/-, Rs.2,45,908/- and Rs.35,809/- for the assessment years 2009-10, 2010-11 and 2011-12 respectively. We allow ground Nos. 3 & 5, 4 & 5 and 4 & 5 for the above assessment years respectively.

10.1 Coming to ground Nos. 3 & 4 in the appeals for the assessment years 2010-11 and 2011-12 the assessee challenged the order of the ld. CIT (Appeals) in sustaining the addition made on the alleged entries in the seized material at Rs.8,00,000/- and Rs.1,08,000/- for both these assessment years respectively.

10.2 Brief facts are that the Assessing Officer in the course of assessment proceedings required the assessee to prove the identity of the persons whose names are appearing in the loose sheets/diary seized, expenditure and reconciliation of the documents and how

these are restricted in the books of accounts. The assessee submitted its reply as under:-

“The content of the pages of seized material are related to different employee of the assessee and group companies. The contents are normally notings of the employees made from time to time for their convenience. Some time the noting was related to the several site matter & some times these are even related to personal matter of employees also.

In some case these are rough memorandum jottings noted which may or may not be part of financial books/transactions.

The assessee has explained about the identification of the concerned person whose diaries and loose paper are belonging to The assessee has also explained about the working of the employee/ persons whose diary is belonging to and during the working period persons/ employee used the private/ personal seized diary at his table and makes different noting time to time.

The diary can't be termed as books of account as the same contains non-financial noting like addresses, phone nos. calculations, to-do tasks etc and most of the noting are requests related to payments on phone to be made to vendors/ suppliers against work done on sites/projects of the assessee and group company and has no closing or opening balances. However the assessee has tried to co-relate, to the extent possible, the entries in respect of which explanation has been sought with the statutory books of accounts maintained by the assessee.”

10.3 However, the Assessing Officer treated Rs.9,00,000/- in respect of three entries (Rs.1,00,000/-, Rs.5,00,000/- and Rs.3,00,000/-) made in the loose sheets/diary observing that the assessee has not explained the entries with regular books of accounts and also could not prove the identity of the parties and there was no satisfactory explanation of the amount written in the

diaries and loose papers. Similarly for the assessment year 2011-12 the Assessing Officer made addition of Rs.1,08,000/- in respect of two entries consisting of Rs.50,000/- and Rs.58,000/-.

10.4 On appeal the ld. CIT (Appeals) in so far as assessment year 2010-11 is concerned restricted the addition to Rs.8,00,000/- out of Rs.9,00,000/- and for the assessment year 2011-12 he sustained the entire addition of Rs.1,08,000/-.

10.5 Before us the ld. Counsel for the assessee submits that the Assessing Officer did not bring any evidence or material on record to corroborate that these expenses were incurred by the appellant. In fact the name of the appellant nowhere appeared on any of these documents. In the absence of any such evidence being brought on record by the AO to say that the above expense were incurred by the appellant corroborating the same with the seized material, the AO was not justified in making the additions in the hands of the appellant. No further investigation has been carried out by the AO post search nor did even in the remand proceedings, the AO did not conduct any enquiry to alleged that such expense or cash payment/received by the appellant. On going through these documents, it brings to notice that the name of other persons is clearly stated. The AO has not made effort whatsoever to make any investigation. No statement of the appellant recorded during the course of the search viz-a-viz the impugned seized material. Further the Assessing Officer also has picked up the figures stated therein for making the addition even without mentioning the nature and the basis on which he has considered the figures stated in the

seized material as the income of the appellant. The Assessing Officer simply stated that there was no hand written and in the absences of any explanation the amount written therein is added back in the total income of the appellant. The addition cannot be justified merely on this vague allegation without bringing any material on record. The contention of the appellant that this document did not pertain to him or its rough working for the site purpose has not been verified by the AO and in the absence of any corroboration or further investigation made by the Assessing Officer the addition based on this paper cannot be sustained.

11. The Id. Counsel also placed reliance on the following decisions:-

- (i) Common Cause (A Registered Society) Vs. UOI 394 ITR 220 (SC)
- (ii) S.P. Goyal Vs. DCIT 82 ITD 85 (Mum)
- (iii) CIT Vs. Girish Chaudhary 296 ITR 619 (Del)
- (iv) CIT Vs. D.K. Gupta 308 ITR 230 (Del)
- (v) CIT Vs. Ved Prakash Choudhary 305 ITR 245 (Del)
- (vi) CIT Vs. Vatika Landbase (P) Ltd. 383 ITR 320 (Del)
- (vii) Pr. CIT Vs. Umesh Ishrani 108 taxmann.com 437 (Bom)
- (viii) CIT Vs. Anil Bhalla 322 ITR 191 (Del)
- (ix) Samta Khinda Vs. ACIT 294 ITR 49 (SC)
- (x) CIT Vs. P.V. Kalyansundaram  
(in ITA Nos. 336/Del/2012 & 5515/Del/2013 dated 29.11.2016)

12. The ld. Counsel further placing reliance on the following decisions submits that if the Assessing Officer disbelieved explanation of the assessee he ought to have issued summons to the payees and in the absence thereof no adverse inference could have been drawn against the assessee:-

- (a) CIT Vs. Genesis Commet (P) Ltd. 163 Taxman 482 (Del)
- (b) CIT Vs. V. B. Aggarwal 296 ITR 750 (Del)
- (c) EMC Works (P) Ltd Vs. ITO 49 ITR 650 (All)
- (d) Nathu Ram Premchand Vs. CIT 49 ITR 561 (All)
- (e) CIT Vs. Orissa Corporation (P) Ltd. 159 ITR 78 (SC)
- (f) CIT Vs. Divine Leasing and Finance Ltd. 299 ITR 268 (Del).

13. On the other hand, the ld. DR submits that in the loose papers and the diary seized the names are mentioned, dates are mentioned, amounts are mentioned and, therefore, it is not a dumb document. The ld. DR submits that the addition was rightly made by the Assessing Officer based on the seized materials.

14. Heard rival submissions perused the orders of the authorities below. On perusal of the assessment order we find that the Assessing Officer made addition in respect of the entries made in the loose sheets/diary observing that the assessee has not explained the entries with regular books of accounts and also could not provide the identity of the parties. We observe that the assessee has stated as under:-

“The content of the pages of seized material are related to different employee of the assessee and group companies. The contents are normally notings of the employees made from time to time for their convenience. Some time the noting was related to the several site matter & some times these are even related to personal matter of employees also.

In some case these are rough memorandum jottings noted which may or may not be part of financial books/transactions.

The assessee has explained about the identification of the concerned person whose diaries and loose paper are belonging to The assessee has also explained about the working of the employee/ persons whose diary is belonging to and during the working period persons/ employee used the private/ personal seized diary at his table and makes different noting time to time.

The diary can't be termed as books of account as the same contains non-financial noting like addresses, phone nos. calculations, to-do tasks etc and most of the noting are requests related to payments on phone to be made to vendors/ suppliers against work done on sites/projects of the assessee and group company and has no closing or opening balances. However the assessee has tried to co-relate, to the extent possible, the entries in respect of which explanation has been sought with the statutory books of accounts maintained by the assessee.”

15. As could be seen from the above the assessee has submitted in the course of assessment proceedings that these loose sheets/diaries were written by various employees and also explain about the working person whose diary is belonging to and during the working period persons/employees used the private/person seized diary at his table and makes different noting from time to time. It was also stated by the assessee that most of the noting or requests related to payments on phone to be made to vendors/suppliers

against the work done on site projects of the assessee and group company and has no closing or opening balances. However, the Assessing Officer picked up certain entries in the diary where in the daily entry reflected as cash. The Assessing Officer had not made of any sort of enquiry or any investigation carried out by the Assessing Officer post search nor in the remand proceeding. To find out whether the entries appearing in the diary reflects either the assessee has received the payments or made the payments. The Assessing Officer did not bring any material or evidence to corroborate that these expenses were incurred by the assessee. The Assessing Officer has not made any effort whatsoever to make any investigation even though names of persons clearly mentioned in the entries made in the loose sheets. There was no statement recorded from the assessee during the course of search vis-à-vis the impugned seized material. We observe that the Assessing Officer simply added the amounts appearing in the diary as unexplained income of the assessee. The Assessing Officer also did not verify the contention of the assessee that these loose sheets did not pertain to the assessee or it is rough work for the site purposes. Therefore, since the Assessing Officer has not made any efforts to make any sort of enquiries or investigation on the entries made, we are of the view that this issue has to go back to the Assessing Officer for further examination and investigation and for de novo adjudication in accordance with law. Thus, we set aside this issue to the file of the Assessing Officer for de novo adjudication. Ground No. 3 and 4 of grounds of appeal of the assessee for the assessment years 2010-11 and 2011-12 are allowed for statistical purposes.

16. Now we take up the appeals in ITA. Nos. 4117, 4118, 4120 and 4122/Del/2018 for the assessment years 2008-09 to 2011-12 filed by the assessee and the Revenue appeal in ITA. No. 5123/Del/2018 for the assessment year 2010-11 in the case of the assessee M/s. Brahamputra Infrastructure Ltd.

17. The ld. Counsel for the assessee at the outset submits that ground Nos. 1 to 1.4, 2 and 6 for the assessment year 2008-09 and ground Nos. 1 to 1.4, 2 and 8 for the assessment years 2010-11 and 2011-12 are not pressed. In view of the submissions of the ld. Counsel these grounds are dismissed as not pressed.

18. Ground No. 7 for the assessment year 2008-09 is in respect of levy of interest which is consequential in nature and similarly for the assessment years 2009-10 to 2011-12 ground No. 9 is in respect of levy of interest which is consequential in nature and, therefore, these grounds are not required to adjudicate.

19. The ld. Counsel for the assessee further submits that ground Nos. 4 and 4.1 for assessment year 2008-09 and ground Nos. 6 to 7.1 for assessment years 2009-10 to 2011-12 are identical and is directed against addition made by the Assessing Officer on the basis of DVO's report holding that difference between the value shown by the assessee in the books of accounts and value estimated by the DVO which was sustained by the ld. CIT (Appeals). The ld. Counsel for the assessee submits that an identical issue has been decided in assessee's own case in its favour for the assessment years 2006-07 and 2007-08 by the Tribunal in ITA. Nos. 4115 and 4116/Del/2018 dated 15.03.2022 following the decision of the

Hon'ble Supreme Court in the case of Sangam Cinema Vs. CIT [(2011) 197 taxmann.com 203 (SC) in the absence of rejection of books of accounts.

20. The ld. DR fairly submits that the issue has been decided in favour of the assessee by the Tribunal. On perusal of the order of the Tribunal we observe that the issue has been decided by the Tribunal in favour of the assessee for assessment years 2006-07 and 2007-08 where in the Tribunal held as under:-

“8. We have carefully considered the orders of the authorities below. Basis of the addition can be understood from the following chart:-

Financial Year	Declared cost of construction/ investment in rupees	Financial year- wise estimated cost of construction/investment in rupees	Difference
2005-06	33,67,020	35,33,459	1,66,439
2006-07	7,60,95,749	7,98,57,327	37,61,578
2007-08	6,15,69,647	6,46,13,169	30,43,522
2008-09	12,47,29,721	13,08,95,383	61,65,662
2009-10	24,89,75,708	26,12,83,119	1,23,07,411
2010-11	12,09,71,650	12,69,51,543	59,79,893
<b>Total</b>	<b>63,57,09,495</b>	<b>66,71,34,000</b>	<b>3,14,24,505</b>

9. A perusal of the above chart clearly shows that the only reason for making the impugned addition is the difference between the investment shown in the books and the valuation done by the DVO. In our considered opinion, once the assessee is maintaining regular books of account and in the course of its business the assessee has recorded the transactions in its books of account, then, without finding/pointing out any defect in the books of account and without holding that the books of account are rejected, then the Assessing Officer cannot proceed to make addition on the basis of DVO's report.

10. The Hon'ble Supreme Court in the case of Sargam Cinema [supra], has held that the assessing authority could not refer the matter to the DVO in a case where there was no categorical finding recorded by the Tribunal, then the books of account were never rejected. The relevant findings read as under:

"4. In the present case, we find that the Tribunal decided the matter rightly in favour of the Assessee inasmuch as the Tribunal came to the conclusion that the assessing authority could not have referred the matter to the Departmental Valuation Officer (DVO) without the books of account being rejected. In the present case, a categorical finding is recorded by the Tribunal that the books were never rejected. This aspect has not been considered by the High Court. In the circumstances, reliance placed on the report of the DVO was misconceived.

5. For the above reasons, the impugned judgment of the High Court is set aside and the order passed by the Tribunal stands restored to the file. Accordingly, the Assessee succeeds."

11. In light of the aforesaid decision of the Hon'ble Supreme Court [supra] we find that in the appeals under consideration also the books of account have not been rejected. Therefore, the ratio laid down by the Hon'ble Apex Court squarely applies on the case in hand. Respectfully following the same, both the appeals of the assessee are allowed."

21. Issue being identical respectfully following the said decision in the assessee's own case we allow the grounds of appeal of the assessee on this issue.

22. Coming to ground Nos. 3 to 3.4 the issue is again relating to the addition made by the Assessing Officer based on the loose sheets/diary found in the course of search. The issue has been examined by us while disposing of the appeals for the assessment years 2010-11 and 2011-12 in the case of the assessee Brahamputra

Infrastructure Ltd. in ITA. Nos. 4121 and 4123/Del/2018 and the facts are identical. Therefore, the decision taken therein applies mutatis mutandis to the appeals for the assessment years 2008-09 to 2011-12. We order accordingly.

23. The last common ground in the appeals of the assessee for the assessment years 2009-10 to 2011-12 is in respect of disallowance of expenses/purchases made by the Assessing Officer and restricted by the Id. CIT (Appeals) to Rs.63,125/-, Rs.3,68,236/- and Rs.8,438/- for these assessment years respectively. The Revenue in its appeal in ITA. No. 5123/Del/2018 is in appeal against the deletion of the addition of Rs.98,09,358/- only for the assessment year 2010-11.

24. This issue is identical to the issue decided in the preceding paras in respect of appeals in ITA. Nos. 4119, 4121 and 4123/Del/2018 and we have already deleted the addition sustained by the Id. CIT (Appeals). Since the facts are almost identical for the reasons therein, we delete the addition sustained by the Id. CIT (Appeals) in respect of purchases/expenses made by the Assessing Officer in these appeals. Thus ground Nos. 4 & 5 raised by the assessee in these appeals for the assessment years 2009-10 to 2011-12 are allowed and ground raised by the Revenue in its appeal in ITA. No. 5123/Del/2018 is rejected.

25. In the result, appeal of the assessee in ITA. No. 4119/Del/2018 for the assessment year 2009-10 is allowed and the appeals in ITA. Nos. 4121 and 4123/Del/2018 for the assessment years 2010-11 and 2011-12 are partly allowed as indicated above,

the appeals of the assessee in ITA. Nos. 4117, 4118, 4120 & 4122/Del/2018 are partly allowed as indicated above and the appeal of the Revenue in ITA. No. 5123/Del/2018 is dismissed.

Order pronounced in the open court on : 31/05/2023

Sd/-  
( N. K. BILLAIYA )  
ACCOUNTANT MEMBER

Sd/-  
( C. N. PRASAD )  
JUDICIAL MEMBER

Dated : 31/05/2023

*\*MEHTA\**

Copy forwarded to :

1. Appellants;
2. Respondents;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	29.05.2023
Date on which the typed draft is placed before the dictating member	30.05.2023
Date on which the typed draft is placed before the other member	31.05.2023
Date on which the approved draft comes to the Sr. PS/ PS	31.05.2023
Date on which the fair order is placed before the dictating member for pronouncement	31.05.2023

Date on which the fair order comes back to the Sr. PS/ PS	31.05.2023
Date on which the final order is uploaded on the website	<del>31.05.2023</del>
Date on which the file goes to the Bench Clerk	31.05.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	