

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F', NEW DELHI**

**Before Sh. Kul Bharat, Judicial Member  
Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 5833/Del/2019 : Asstt. Year: 2015-16  
ITA No. 679/Del/2020 : Asstt. Year: 2016-17**

ACIT/DCIT, Circle-28(1), New Delhi-110002 (APPELLANT)	Vs	Pinnacle Clothing Company, B-377, New Friends Colony, New Delhi-110065 (RESPONDENT)
<b>PAN No. AAIFP3678F</b>		

**CO No. 71/Del/2022 : Asstt. Year: 2015-16  
CO No. 105/Del/2022 : Asstt. Year: 2016-17**

Pinnacle Clothing Company, B-377, New Friends Colony, New Delhi-110065 (APPELLANT)	Vs	ACIT/DCIT, Circle-28(1), New Delhi-110002 (RESPONDENT)
<b>PAN No. AAIFP3678F</b>		

**Assessee by : Sh. K. Sampath, Adv.  
Sh. V. Rajakumar, Adv.  
Revenue by : Sh. Vivek Vardhan, Sr. DR**

<b>Date of Hearing: 02.08.2023</b>	<b>Date of Pronouncement: .08.2023</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeals and Cross Objections have been filed by Revenue and the assessee against the orders of Id. CIT(A)-10, New Delhi dated 08.04.2019 and 30.11.2019.

2. In ITA No. 5833/Del/2019, following grounds have been raised by the Revenue:

*"1. On the facts and circumstances of the case, the Ld. CIT(A) was not justified in allowing the bogus claim of purchases by the assessee from M/s Vrindavan International Trade Pvt. Ltd. ignoring the credible findings made in the case of M/s Vrindavan International Trade Pvt. Ltd. which established bogus trading made by M/s Vrindavan International Trade Pvt. Ltd.*

*2. On the facts and circumstances of the case, the Ld. CIT(A) was not justified in allowing the bogus claim of purchases made by the assessee from M/s Vrindavan International Trade Pvt. Ltd. ignoring the affidavit filed by M/s Vrindavan International Trade Pvt. Ltd. accepting that it was an entry provider engaged in providing bogus purchase claims.*

*3. On the facts and circumstances of the case, the Ld. CIT(A) was not justified in accepting the purchase claim of the assessee by placing reliance on the self serving documents submitted by the assessee viz gate inward register and invoices of M/s Vrindavan International Trade Pvt. Ltd. when it was accepted by M/s Vrindavan International Trade Pvt. Ltd. that its entire purchases were bogus and not verifiable.*

*4. On the facts and circumstances of the case, the Ld. CIT(A) was not justified in holding that the claim of bogus purchases cannot be disallowed without rejecting the books of account ignoring the fact that the inquiry was made with respect to one particular purchase party amounting to Rs. 3,59,02,700/- as against the total purchases of Rs. 60,84,91,553/- declared by the assessee during the year.*

*5. On the facts and circumstances of the case, the Ld. CIT(A) was not justified in allowing the claim of bogus purchases by accepting the fact that such*

*purchases were made by the assessee from M/s Vrindavan International Trade Pvt. Ltd. in subsequent years as well as ignoring the fact that on similar issues the AO has made addition for AY 2015-16 & 2016-17.*

*6. On the facts and circumstances of the case, the Ld. CIT(A) was not justified in allowing the bogus purchase claim of the assessee by holding that the AO has not conducted sufficient enquiry ignoring the judicial principles in the case of CIT vs Jansampark Advertising & Marketing (P)Ltd (ITA No. 525/2014) wherein Hon'ble Delhi High Court has entrusted CIT(A) with the responsibility of making further investigation in the case if required."*

3. In ITA No. 679/Del/2020, following grounds have been raised by the Revenue:

*"1. Whether on facts and in circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 300,00,900/- made by the AO to the income of the assessee on account of bogus purchases ignoring the fact that assessee has failed to substantiate the factum of actual purchases from M/s Varindaran International Trade Pvt. Ltd. and also failed to produce that party ?*

*2. On the facts and in circumstances of the case, the Ld. CIT(A) was not justified in accepting the purchase claim of the assessee by placing reliance on self-serving documents submitted by the assessee when it was accepted by M/s Vrindavan International Trade Pvt. Ltd. itself that the purchases are bogus and not verifiable and also ignoring various other facts brought on record by AO.*

*3. Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in law and on facts in deleting 5% of travelling expenses on account of personal use ignoring the fact that AO made addition on agreed basis?"*

4. In CO No. 71/Del/2022, the assessee has also raised following grounds:

*"1. Rs.6,31,441/- on account of travel expenses on ad-hoc basis.*

*2. Rs.39,954/- on account of other expenses treating the same for non-business purposes.*

*3. Rs.13,22,972/- on account of contribution to employees provident fund and employees State Insurance under section 36(1)(va) of the Income Tax Act, 1961."*

5. In CO No. 105/Del/2022, the assessee has also raised following grounds:

*"1. Rs.4,38,450/- on account of travel expenses on ad-hoc basis.*

*2. Rs.6,59,078/- on account of contribution to employees provident fund and employees State Insurance under section 36(1)(va) of the Income Tax Act, 1961."*

6. The assessee filed return of income on 30.09.2015 declaring income of Rs.7,41,08,880/-. The firm had two partners, namely, Sh. Sumit Kumra and Ms. Vani Kumra. The assessee firm was engaged in the business of manufacturing and export of garments. The partners have a profit share ratio of 50% each. In his Assessment Order, the AO made following addition to the income of the assessee:

Sl. No.	Particulars	Amount
1.	Disallowance of 10% of travelling expenses on account of personal use.	6,31,441/-
2.	Disallowance of 10% of expenses under the head workmen & staff welfare and sales promotion on account of personal use.	39,954/-
3.	Purchases treated as bogus.	3,59,02,700/-
4.	Disallowance on account of late deposit of employees contribution to Provident Fund and ESI u/s 36(1)(va).	13,22,972/-
	<b>Total</b>	<b>3,78,97,067/-</b>

**& CO No.71/Del/2022**

**CO No.105/Del/2022**

**Travelling Expenses of Rs.6,31,441/- & Rs.4,38,450/-:**

7. The AO disallowed 10% of the travelling expenses out of Rs.63 lacs debited in the P&L account alleging that the assessee did not provide the details in the "desired format". The Id. CIT(A) held that the element of personal expenditure cannot be "ruled out". We find that "no details" as to how an amount of Rs.6,31,441/- and Rs.4,38,450/- has been treated as "personal in nature" by the revenue authorities. "No evidence" has been brought on record to prove that the expenses are not allowable and hence, we direct the addition be deleted.

**ESI & PF of Rs.13,22,972/- & Rs.6,59,078/-:**

8. The issue of deposit of ESI & PF before furnishing the return u/s 131(1) of the Income Tax Act, 1961 stands settled by the order of the Hon'ble Apex Court in the case of Checkmate Services P. Ltd. vs. Commissioner Of Income Tax-I in CA No. 2833/2016 vide order dated 12.10.2022 observed that there is a marked distinction between the nature and character of the

two amounts viz., the employers' contribution and employees' contribution required to be deposited by the employer. The first one is the employer's liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees' income and held in trust by the employer. The Hon'ble Apex Court held as under:

*"In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43 B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assesseees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non-obstante clause under Section 43 B or anything contained in that provision would not absolve the assessee from its*

*liability to deposit the employee's contribution on or before the due date as a condition for deduction."*

9. As the issue of payment of employees contribution towards the PF has been ruled against the assessee by the Hon'ble Supreme Court. Hence, the appeal of the assessee on this ground is liable to be dismissed.

### **CO No.71/Del/2022**

#### **Other Expenses:**

10. Owing to the low amount of Rs.39,950/-, this issue has not been pressed.

### **ITA No. 5833/Del/2019**

### **ITA No. 679/Del/2020**

#### **Trading Addition:**

11. The AO made addition on account of inflation of purchases.

12. The facts taken from the order of the Id. CIT(A) are as under:

*"This ground concerns an addition of Rs.3,59,02,700/- made by the Assessing Officer on the allegation of inflation of purchases. The Appellant which is dealing in cloth had made purchases from several parties during the year: The Assessing Officer took exception to the purchases made from M/s Vrindavan International Trade Pvt. Limited for he had received some communication from the ITO, Ward-26(4). New Delhi vide File No. ITO Ward 26(4)/2017-18/522 dated 04.12.2017 that his assessee - M/s Vrindavan International Trade Pvt. Limited had shown sale of fabrics to the Appellant of Rs. 3,59,02,700/- which doubted the transaction. It was further informed by that ITO that M/s Vrindavan International Trade Pvt.*

*Limited had made purchases from over a dozen firms of the group which had seven Proprietors all of which were found to be spurious. The enquiries made by the ITO through his Inspector revealed that the evidence of transportation of goods was missing.*

*On that basis the ITO had asked M/s Vrindavan International Trade Pvt. Limited to produce the parties selling goods to it. Besides that the ITO made enquiries and found that the bank accounts of all the concerns were through the mutual indulgence and cross - introductions of a set of persons. It was also noticed by the Assessing Officer that M/s Vrindavan International Trade Pvt. Limited had disclosed sales of Rs. 1578.54 crores in the AY 2015-16 whereas for the preceding year there was no sale. A minor comment about the tax audit of these firms was also made. On that basis the ITO of M/s Vrindavan International Trade Pvt. Limited got suspicious about the sales purported to have been made by the seven Proprietary firms and so sent the data with him to the Appellant for comments on the point of disallowance of purchases made by the Appellant from M/s. Vrindavan International Trade Pvt. Ltd.*

*3.1. The Appellant answered the queries as raised which is discussed in paras 7.1 to 7 3 of the assessment order. In sum, the Assessing Officer concluded that M/s Vrindavan International Trade Pvt. Limited had submitted before its ITO that the sale transaction as shown by it was incorrect and so it was agreeable to an assessment @ 0.5% of its turnover. This reply of M/s Vrindavan International Trade Pvt. Limited was confronted to the Appellant during the assessment proceedings. The Appellant vide letter dated 29.12.2017 submitted the following evidence in confirmation of its version after repudiating the testimony of M/s Vrindavan International Trade Pvt. Limited.*

*"1. Confirmation of transactions and balance from the party i.e. M/s Vrindavan International Trade Pvt. Limited:*

*2. Lorry receipt for bringing the consignments from the vendor's premises to our factory.*

3. A register of details of goods received at the factory gate duly signed by the Guard at the gate in which the consignment receipt has been duly recorded.

4. The department representative who went to the premises of the vendor has also been able to deliver notice sent by you.

4.2 The Assessing Officer on a consideration of the totality of the evidence noted that the evidence furnished by the assessee was inadequate and unsatisfactory and after placing reliance on the decision of the Hon'ble Delhi High Court in the case of CIT Vs Motor General Finance Limited (2002) 254 ITR 449 (Delhi) and of the Hon'ble Calcutta High Court in CIT v. Arati Jana (Smt) (AY 2006-07) and another of the Hon'ble Gujarat High Court in N.K. Industries Limited v. DCIT (2017) 292 CTR 354 proposed the addition of Rs. 3,59,02,700/- on the ground of purchase of the Appellant being bogus.

3.3 It is respectfully submitted that the addition made by the Assessing Officer is misconceived, erroneous and unsustainable. It is a recognized fact of life and of general occurrence that anyone duplicating or otherwise masquerading in any way invariably and imperatively has a limited number of genuine transaction in order to provide a semblance of authenticity and credibility. In the subject case M/s Vrindavan International Trade Pvt. Limited sold items genuinely to the Appellant and had it not been so the Appellant would not have been able to execute its own sales. So far as the purchases by the Appellant from M/s Vrindavan International Trade Pvt. Limited are concerned there is unimpeachable evidence in the form of Lorry Receipts, entries in the GIR Register and the testimony of the Departmental Officers who had visited the premises of M/s Vrindavan International Trade Pvt. Limited and submitted positive reports in confirmation therefor. All that evidence has been wished away by simply pointing out a few inane and in consequential discrepancies and deficiencies. The offer by M/s Vrindavan International Trade Pvt. Limited of a 0.5% assessment was made by it to suit its litigational and business expediency. The Assessing Officer has omitted to abide by the substance of the transaction. The Assessing Officer has precipitately rushed to the case

*laws to fortify his understanding of the facts which exercise in law is fallacious and unsustainable. After the Departmental Representative had accessed M/s Vrindavan International Trade Pvt. Limited and had obtained a confirmation as to the veracity of the transactions, there was nothing left for the Appellant to prove the genuineness or do anything else in the context of proof genuineness of the transaction.*

*3.4 The Assessing Officer failed to appreciate that the surrender made by the vendor, namely, M/s Vrindavan International Trade Pvt. Limited was done by it in his own interest to buy pea and to avoid protracted litigation and to close the issue once and for all. That act could not put against the Appellant to reject its case.*

*3.5 The Assessing Officer demurs that the CCTV footage of the factory of M/s Vrinda International Trade Pvt. Limited had not been taken. That was unnecessary because it was body's case that M/s Vrindavan International Trade Pvt. Limited had manufactured the go which they had subsequently sold to the Appellant. M/s Vrindavan International Trade Limited was a pure and simple trading firm of cloth from the biggest Cloth Market of Cha Chowk viz. Gandhi Cloth Market. They had simply done only the trading in cloth and had n claimed any manufacturing. Obviously, therefore, the absence of CCTV footage of manufacturing operations of M/s Vrindavan International Trade Pvt. Limited as complaint need not have been secured.*

*3.6 The averments made by M/s Vrindavan International Trade Pvt. Limited and the sum made by it in the course of those proceedings were not confronted for verification and examination to the Appellant at any stage of the proceedings. Had it been done the Appellant would have brought out the error in the conclusion of the Assessing Officer that the put transactions of the Appellant with M/s Vrindavan International Trade Pvt. Limited were entries and were not genuine purchases. The Appellant on the other hand has substantiated transaction with the customary documents, such as, Lorry Receipts, Factory gate endorsements, the certification by the guard, the Departmental Representative's confirmation about the genuineness of the transaction all of which go to establish the*

*genuineness transaction of purchase. All such evidence has been wished away by the Assessing Officer alleging irregularities which are totally superficial and are otherwise insignificant in nature. The Assessing Officer has omitted to notice the substance of the transaction and has merely complained about some deficiencies in form. The Assessing Officer has rushed to fortifying his findings with case laws which have no bearing or similarity with the facts at hand. The Hon'ble Delhi High Court in Motor General Finance Limited (supra) had underlined the need for the assessee to produce the evidence in its defense. That has indeed been done in the subject case by the assessee by producing multiple documents. That is also supported by the departmental representative's report. There is no evidence per contra with the Assessing Officer.*

*3.7 In sum, therefore, the Appellant has proved with irrefutable evidence that it had indeed purchased the goods from M/s Vrindavan International Trade Pvt. Limited and thereafter only had sold the same to its customers. The Appellant's version of purchases has been confirmed even by the departmental representative who was deputed to do the requisite enquiries and carryout the investigation. All that notwithstanding the Lorry receipts and the inward register retained at the gate by the guard directly confirmed the entry of the goods into the premises. In that situation there was nothing further left to be proved by the Appellant. It is incontrovertible that without making basic purchases no sales can ever be made. The entirety of the sales are vouched. The sales have fetched consideration which has been returned as income. In such a situation it would be wrong to doubt the purchases and even if there is an iota of doubt on purchases that should disappear in the face of the fact that for the purpose of internal control the assessee has kept a robust record of stock receipts and issues. With all that being in place, there could be no question of any manipulation or obfuscation. Yet, even if such plausible evidence were to be ignored then the addition could not be for the entirety of the purchases which was doubted. The addition could only be for the amount of profit embedded in such purchases. This is stated on the authority of the decision of the Hon'ble Gujarat High Court in the case of CIT vs. President Industries (2002) 258 ITR 258 (Guj). So viewed from*

*any angle the addition as made in a sum of Rs.3.59 crores by the Assessing Officer is totally wrong and wholly unsustainable.*

*3.8 In a similar case where the correctness of the purchases was doubled and disallowed and done so without providing opportunity to the affected assessee for cross examining the supplier of goods the Hon'ble Bombay Tribunal has held in ACG Arts & Properties Pvt. Limited vs. DCIT (2018) 171 ITD 184 that the addition made is unsustainable on facts and laws Decision annexed.*

*3.9 All the evidence taken as a whole show that the inference arrived by the Assessing Officer is based on a wrong interpretation of available material and was in disregard of the departmental representative's account. Such an inference is erroneous and unsustainable in law. Since the purchases were genuine the addition as made on this account may kindly be directed to be deleted."*

13. In the result, the Id. CIT(A) deleted the addition.

14. Aggrieved, the revenue filed appeal before the ITAT.

15. Heard the arguments of both the parties and perused the material available on record.

16. We have gone through the reasons given by the Id. CIT(A) while deleting the addition which is as under:

**The genesis of issue:**

17. The AO has considered the entire purchases from M/s Vrindavan International Trade Pvt. Ltd. as bogus and added the entire sum to the income of the assessee. In this case, the AO received information from the ITO, Ward-26(4), New Delhi vide File No. ITO Ward 26(4)/2017-18/522 dated 04.12.2017 that his

assessee - M/s Vrindavan International Trade Pvt. Ltd. had shown sale of fabrics to the Assessee of Rs.3,59,02,700/- which are doubtful transactions because the purchases from 12 parties by this concern have been found bogus and unverifiable. It was informed by the ITO that M/s Vrindavan International Trade Pvt. Limited had made purchases from over a dozen firms of the group which had seven Proprietors all of which were found to be spurious. The enquiries made by the ITO through his Inspector revealed that the evidence of transportation of goods was missing. On that basis, the ITO had asked M/s Vrindavan International Trade Pvt. Ltd. to produce the parties selling goods to it. Besides that, the ITO made enquiries and found that the bank accounts of all the concerns were through the mutual indulgence and cross - introductions of a set of persons. It was also noticed by the Assessing Officer that these 7 proprietors had disclosed total sales of Rs. 1578.54 crores in the A.Y. 2015-16 whereas for the preceding year there was no sale. On that basis, the ITO of M/s Vrindavan International Trade Pvt. Ltd. got suspicious about the sales purported to have been made to the assessee because purchases from the seven Proprietary firms did not appear to be genuine and unverifiable. He sent the information to the AO of the assessee with the advisory to deeply examine the purchases of the assessee i.e. M/s Pinnacle Clothing Company. The AO of the assessee confronted the findings of the AO of the M/s Vrindavan International Trade Pvt. Ltd. to the Assessee for comments and furnishing of documentary evidences in support of purchases made by the Assessee from M/s Vrindavan International Trade

Pvt. Ltd. including relevant extracts from stock register, goods receipt notes, transportation proof etc.

**Enquiries by the AO:**

18. The AO had issued notice u/s 133(6) to this party which was duly replied by it and accounts were confirmed. The assessee answered the queries as raised which is discussed in paras 7.1 to 7.3 of the Assessment Order. The Assessing Officer also received information from ITO, Ward-26(4), New Delhi that M/s Vrindavan International Trade Pvt. Ltd. had in order to settle and finalize the ongoing income tax proceedings submitted in an affidavit dated 22/12/2017 before its ITO that the purchase transactions as shown by it were bogus and not verifiable and so it agreed to surrender 0.5% of the turnover of Rs.41.29 crores as profit i.e. Rs.20.64 lacs. This reply of M/s Vrindavan International Trade Pvt. Limited was confronted to the Assessee during the assessment proceedings on 27.12.2017.

**Reply of the Assessee:**

19. The Assessee vide letter dated 29.12.2017 submitted the following evidence in confirmation of its version after repudiating the testimony of M/s Vrindavan International Trade Pvt. Limited.

1. Confirmation of transactions and balance from the party i.e. M/s Vrindavan International Trade Pvt. Limited:
2. Lorry receipt for bringing the consignments from the vendor's premises to our factory.

3. A register of details of goods received at the factory gate duly signed by the Guard at the gate in which the consignment receipt has been duly recorded.
4. The department representative who went to the premises of the vendor has also been able to deliver notice sent by you.

### **Adjudication by the AO:**

20. The Assessing Officer on a consideration of the totality of the evidence noted that the evidence furnished by the assessee was "inadequate and unsatisfactory" and after placing reliance on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Motor General Finance Limited (2002) 254 ITR 449 (Delhi) and of the Hon'ble Calcutta High Court in CIT vs. Arati Jana (Smt) (AY 2006-07) and another of the Hon'ble Gujarat High Court in N.K. Industries Limited vs. DCIT (2017) 292 CTR 354 made the addition of Rs.3,59,02,700/- on the ground of purchases of the Assessee being bogus.

### **Submission before the Id. CIT(A):**

21. Before the Id. CIT(A), in order to explain the purchases made by the assessee from this supplier, the assessee furnished copy of gate entry register, GRs of Karam Transport Service and invoices of purchases from M/s Vrindavan International Trade Pvt. Ltd. The assessee also submitted the ledger accounts of this supplier in its books of account which is a running account in which the assessee has regularly purchased the fabrics over the years from the F.Y. 2014-15 onwards and accounts have

been cleared by payments through cheques. In F.Y. 2014-15, the total purchase were Rs.3,59,02,700/- similarly purchases for next F.Y. i.e. 2015-16 were to the tune of about Rs.3 crores thereafter in F.Y. 2016-17 it was Rs.5.18 crores. The assessee had been regularly making payments against these purchases through cheques. These ledger accounts have been duly confirmed by M/s Vrindavan International Trade Pvt. Ltd. u/s 133(6). The assessee had also produced the ledger account of the transporter M/s Karam Cargo Logistic Pvt. Ltd. for payment of Freight and Cartage in which total cartage of Rs.49.15 lacs has been shown paid during FY 2014-15 for which the assessee had deducted the tax @ 2% every month. Copies of all invoices of M/s Vrindavan International Trade Pvt. Ltd. and the transporter maintained regularly during the course of normal conduct of business were also produced during appellate proceedings along with gate inward register.

**Decision of the Id. CIT(A):**

22. The Id. CIT(A) held that no major discrepancy is noticeable from the documents and seem to have been maintained regularly during the course of normal conduct of business. It was held that no efforts have been made by the AO to disprove these evidences produced by the AO regarding purchase of fabrics from M/s Vrindavan International Trade Pvt. Ltd. The Id. CIT(A) held that the AO mainly relied on the information supplied by the ITO, Ward-26(4) only and he made the addition on the basis of surrender made by M/s Vrindavan International Trade Pvt. Ltd. admitting bogus and unverifiable purchases before its ITO. Whereas, the assessee has submitted that it is a

genuine manufacturer and exporter exporting to chain stores in London who have very strict norms including inspection by independent auditors appointed by them.

23. The Id. CIT(A) held that because goods have been duly received as per the evidences submitted to the AO and accounts have been regularly settled in normal course of business through account payee cheques, the offer by M/s Vrindavan-International Trade Pvt. Limited of a 0.5% assessment was made by it to suit its litigational and business expediency and cannot be connected with the purchases made by the appellant unless some direct adverse material is available. The Id. CIT(A) rebutted the observation made by the AO that the lorry receipts and inward register of goods submitted during the proceedings have many irregularities as below:

1. Security Officer has signed every entry except the entries made on account of M/s Vrindavan International Trade Pvt. Ltd.
2. Name of vendor has been returned in front of every entry except M/s Vrindavan International Trade Pvt. Ltd.
3. No lorry number has been mentioned in front of entries made in respect of M/s Vrindavan International Trade Pvt. Ltd.
4. No entry has been signed by vendor.

24. The Id. CIT(A) held that he has gone through the gate inward register and noticed that the observations of the AO are not correct and these small discrepancies are noticeable in

respect of even other inwards also and these are not exclusively and specifically in the case of M/s Vrindavan International Trade Pvt. Ltd. only.

25. The operative portion of the Id. CIT(A) is as under:

*"Such short comings in recording of the inward register are not in all the receipts from M/s Vrindavan International Trade Pvt. Ltd. as pointed out by the AO. In fact, there are several entries against inwards from M/s Vrindavan International Trade Pvt. Ltd. where no such discrepancies are there i.e. Security Officer has duly placed his signature etc. The discrepancies/ irregularities as observed by the AO seems to be made in hurry when the case was getting time barred and he was not having sufficient time for conducting any enquiry. The AO also did not provide any opportunity to the appellant for cross examination of the persons on the basis of whose statement the addition had been made. During appellate proceedings, comments of the AO were called on the submissions of the appellant. But instead of any further enquiry the AO re-iterated his submission and endorsed the view as taken in the assessment order. In my view, the AO has not conducted sufficient enquiry against the evidences of purchases and physical receipt of goods provided by the appellant He could not comment on the running account of the vendor where all payments were being made through banking channel regularly and also he failed to find out any discrepancies in the books of accounts of the appellant. The books of accounts were never rejected by the AO. If the purchases of the appellant had been bogus then how come the sale could be accepted as correct. The appellant is an exporter and its exports are verifiable and if purchases of fabrics were bogus then how come he could make the exports. The AO could not corroborate his allegations with sufficient supporting evidences. Merely making sum observation*

*about the irregularity/discrepancy in the gate inward register cannot make the entire purchases bogus. Such trivial defects in recording of inwards in the register can be noticed not only in the case of this vendor only but commonly on other inwards also. These can be considered as human error and inconsistency, considering the level of education of the person sitting on the gate maintaining the register in normal course of his duty and receiving the goods. If purchases by the vendor has been admitted by him to be bogus from the unverifiable parties that does not mean that the goods were never supplied by him to the appellant until unless it is equally proved bogus in the case of the appellant also with corroborative evidences. The AO has failed to corroborate his findings with sufficient evidences. If the source of the vendor was not verifiable then it could be possible that the vendor would have procured the fabric from different sources and supplied to the appellant with bill. In this regard, the appellant was not given sufficient opportunity to cross examine the vendor. Here onus lies on the party making allegations. The AO failed to provide opportunity during assessment proceedings as well as appellate proceedings too when his comments were called.*

*Reliance is placed on various judicial pronouncements.*

*In the case of Commissioner of Income-tax-1, Mumbai vs. Nikunj Eximp Enterprises (P.) Ltd. order dated December 17, 2012; [2013] 35 taxmann.com 384 (Bombay); [2015] 372 ITR 619 (Bombay), the Hon'ble High Court of Bombay has held that:*

*"Where sales supported purchase and payment was made through banks, merely because suppliers had not appeared before Assessing Officer purchase could not be rejected as bogus.*

*Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of [Burden of proof] - Assessment year 2001-02 - Assessing Officer disallowed income of assessee alleging non-genuine purchases from different parties - Commissioner (Appeals) upheld order of Assessing Officer - Assessee filed letters of confirmation of suppliers, copies of bank statement showing entries of payment through account payee cheques to suppliers and stock reconciliation statements - Sales of purchased goods were not doubted and substantial amount of sales made by assessee was to Government department - Further, books of account of assessee had not been rejected - Tribunal deleted disallowance - Whether merely because suppliers had not appeared before Assessing Officer or Commissioner (Appeals), it could not be concluded that purchases were not made by assessee - Held, yes [Para 7]"*

*Further, in the case of M/s Fancy Wear vs. Income-tax Officer, Ward-24 (3) (1) order dated September 20, 2017 Mumbai [2017] 87 taxmann.com 183 (Mumbai - Trib.)*

*"Where in order to prove genuineness of purchases, assessee had furnished copies of purchase bills, delivery challans, confirmation of ledger accounts of suppliers, sales tax returns and sales tax challans of suppliers and their income tax returns, merely returning of notices under section 133(6) sent to those suppliers could not be sufficient to make additions under section 69C.*

*Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessment years 2010-11 and 2011-12 - Assessee was engaged in business of wholesale trading in readymade garments - Assessing Officer received information from Sales Tax Department and from Director General of Income-tax, Mumbai that assessee had received accommodation entries from several parties,*

*from whom he made purchases of certain amount - He issued notices under section 133(6) to such parties, which were returned by postal authorities with remarks 'not known', 'unclaimed' etc. - Thus, he treated expenditure on purchases as unexplained expenditure under section 69C and made additions to assessee's income - It was noted that all payments to suppliers were made through banking channels - Cross examination of suppliers was not allowed - Assessee had furnished copies of purchase bills, recovery challans, bank statements showing payments made by parties, confirmation of ledger accounts of suppliers, sales tax returns and sales tax challans of suppliers and their income tax returns - Whether on facts, assessee had discharged onus of proving genuineness of transactions and merely returning back of notices under section 133(6) was not sufficient to hold that purchases made were bogus, thus, impugned additions was to be deleted - Held, yes [Paras 5.1 and 5. 7]"*

*6.5 In the case of M/s ACG Arts & Properties (P.) Ltd. vs. Deputy Commissioner of Income-tax, Central Circle-42, Mumbai order dated 23.03.2018; [2018] 93 taxmann.com 486 (Mumbai - Trib.); [2018] 171 ITD 184 (Mumbai - Trib.). It was held that:*

*"Where addition under section 69C was made on account of bogus purchases in respect of paintings, since existence of transaction between assessee and suppliers/sellers could not be doubted and payments were made to suppliers through banking channels and paintings were in possession of assessee and were duly reflected as a part of closing stock, impugned addition was unjustified.*

*Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessment years 2006-07 and 2007-08 - During course of search conducted upon group of concerns which included assessee-company it was revealed that assessee was*

*indulged in accepting bogus purchase bills in respect of paintings and sculptures possessed by it and that such bills were obtained from persons who were engaged in providing accommodation entries - Thus, addition was made to income of assessee - Revenue based its finding on statements of suppliers/sellers of paintings wherein they submitted that they had received cheques from assessee and after clearance withdrew cash and after deducting their commission, balance of cash was handed over to person who came with cheques - It was noted that existence of paintings and same being in possession of assessee, was not in dispute, inasmuch as, all paintings in question, except one (which was sold during year) were available as a part of closing stock of assessee - Existence of transaction between assessee and stated suppliers/sellers could not be doubted, as consideration were paid to such sellers/suppliers through account payee cheques which stood credited in bank account of such suppliers - Statements of stated suppliers/sellers did not prove that consideration going out of assessee's bank account had come back to assessee in form of cash - Quite clearly, statement given by stated suppliers/sellers only conveyed that cash was returned by them to person who gave them cheques and there was uniformity in statements of all suppliers on aforesaid aspect - Whether since there was not enough material with revenue to treat purchase transaction as bogus or not proved, impugned addition made on account of unexplained purchases was unjustified - Held, yes [Para 7.1]"*.

*6.6 The facts of the case of the assessee are squarely covered by the facts of the above case laws. The assessee has in his detailed submission distinguished the case laws on which the AO has placed his reliance in the order. In view of the discussions made above and also the judicial pronouncements above, it is held that the AO has not brought in record sufficient material to prove that the purchases*

*made by the appellant are bogus. The appellant provided sufficient documentary evidences in support of purchase and receipt of the goods but the AO could not controvert these evidences with corroborative supporting material. The AO did not find any defect in the books of account and has not rejected the same. The AO also could not controvert the running ledger account of the vendor in the books of the appellant and that all the payments were made through banking channel. These accounts were duly confirmed by the vendor u/s 133(6) Further, no opportunity for cross examination was provided in violation of natural justice Therefore, in absence of sufficient material in hand against the appellant the addition made by the AO of Rs.3,59,02,700/- towards purchases made from M/s Vrindavan International Trade Pvt. Ltd. is hereby deleted. The ground no. 1 is therefore allowed."*

**Decision:**

26. From the above sequence of events, we find that the addition has been made by the AO based on the information about the statement of the person who offered 0.5% of the turnover to tax while accepting the purchases as bogus and unverifiable. The Id. CIT(A) has gone through the information and also the vouchers payments, lorry receipts and other various documents like export of the goods, independent audit of the products and maintenance of books of accounts and then came to a conclusion that the assessee could not have exported the goods to London without purchasing the raw material. The Id. CIT(A) has also effectively countered the allegations of the Assessing Officer with regard to the signature on the vouchers by the security and in the entry register. Hence, in view of the facts of the case and the supporting judgments relied upon by

the Id. CIT(A), we find no in-congruence in the order of the Id. CIT(A). In the result, the appeal of the Revenue is dismissed.

27. In the result, the appeals of the Revenue are dismissed and the Cross Objections of the assessee are partly allowed.

Order Pronounced in the Open Court on 18/08/2023.

Sd/-

**(Kul Bharat)**  
**Judicial Member**

**Dated: 18/08/2023**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**