

**IN THE INCOME-TAX APPELLATE TRIBUNAL  
JABALPUR BENCH, JABALPUR**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI PAVAN KUMAR GAALE, JUDICIAL MEMBER**

**ITA No.136/Jab/2018  
(ASSESSMENT YEAR- 2013- 2014)**

Asst. Commissioner of Income Tax, Circle-Satna, Satna	vs	Shri Ram Kumar Suresh Kumar, Birla Road, Satna
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN No. AAFFR3899D</b>		

<b>Revenue By</b>	Shri Shravan Kumar Gotru, CIT DR
<b>Assessee By</b>	Shri Rahul Bardia, FCA
<b>Date of hearing</b>	13/09/2023
<b>Date of Pronouncement</b>	22/09/2023

**ORDER**

**PER OM PRAKASH KANT, A.M.:**

This appeal by the Revenue is directed against order dated 12.03.2018 passed by Ld. Commissioner of Income Tax(Appeals)-1, Jabalpur [in short "Ld.CIT(A)"] for the assessment year 2013-14, raising following grounds:

1. *"That on the facts and circumstances of the case, Id.CIT(A) erred in deleting the addition of Rs. 3,57,58,823/- made by the Assessing officer as unexplained credit on account of bogus purchases.*
2. *That on the facts and circumstances of the case, the Id.CIT(A) deleted the addition of Rs. 3,57,58,823/- without appreciating the facts of the case in its entirety that the purchase bills*

*submitted by the assessee belonged to M/s P G Enterprises, 42-Vaikunthdham, Indore, a partnership firm having one of its partner Shri Ramesh Kumar Pandey, whereas the payments have been made to an altogether different PG Enterprises, 801, New Loha Mandi, a proprietorship concern in the name of Shri Jai Prakash Jindal, rendering the credit of Rs. 3,57,58,823/- as ingenuine and unexplained.*

3. *The appellant reserves the right to amend/alter any of the grounds of appeal/add other grounds of appeal at the time of hearing.”*

2. Briefly stated facts of the case are that during the year under consideration, the assessee was engaged in the business of trading of steel, pipes, timber and commercial ply etc. For the year under consideration, the assessee filed return of income on 26.02.2014 declaring total income at Rs.63,07,430/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income Tax Act, 1961 (in short “the Act”) were issued and complied with. During the course of assessment proceedings, the Assessing Officer (in short “AO”) for verification of genuineness of sundry creditors, issued notice u/s 133(6) of the Act. The reply of the notice in the case of party namely, M/s. P.G. Enterprises, 42, Vaikunthdham, Indore was received. However, for verification of such reply received, the AO deputed staff member of his office for physical inspection of the said party. The Tax Assistant of the office of the AO reported that said party, M/s. P.G. Enterprises

denied of having made any transactions with the assessee or having any credit balance with the assessee. This fact of the denial made in writing by the said party was confronted to the assessee. But the assessee contended that it had made purchases from said party through a broker against which the assessee secured purchase bills and transport 'bilty' and also made payments through bank directly through the account of the said party. The assessee submitted that it is beyond his imagination that why the said party declined the transactions. The assessee filed copy of the letter certified by the Bank affirming the payment but the AO was still not satisfied and he asked the assessee to provide details of account to which RTGS payment was made by the assessee, but RTGS details were not provided by the assessee. With no-cooperation from the assessee, the AO made inquiries his resources and found that RTGS payment was transferred to Bank Account No.200013206015 in Indus Ind Bank, Sapna Sangeetha Road Branch, Indore and the said account was opened on 12.09.2012 in the name of M/s. P.G.Enterprises, having address 801, New Loha Mandi, Paresh Tower, Kabin No.103,Indore. This M/s. P.G.Enterprises is a proprietorship concern having proprietor namely, Shri Jail Prakash Jindal. In view of the information gathered, the assessee was again showcaused as to why the credit for an amount of Rs.3,92,25,466/- and the purchase bill

issued by M/s. P.G.Enterprises to be treated as not genuine and therefore, the entire purchase of Rs.3,57,58,823/- credited during the year under the name of M/s. P.G.Enterprises to be added to the income of the assessee as unexplained cash credit. In view of no response, the AO held the credit of said purchase as unexplained cash credit in terms of section 68 of the Act. On further appeal before Ld.CIT(A), the assessee submitted that it purchased 794.060 Metric Ton (MT) of “MS Steel” for Rs.3,57,58,823/- from M/s. P.G.Enterprises and payment against the same was made through banking channel and the vary same goods had been sold to M/s. Oriental Structural Engineers Pvt.Ltd., Chindwara for Rs.3,63,72,008.10. It was submitted that the assessee is duly registered under the Madhya-Pradesh Value Added Tax (M.P.VAT) Act and Central Sales Tax Act, 1956 and carrying on the business of trading in steel and its products etc. The assessee further submitted that business of the assessee was conducted through brokers who used to be in touch with the parties and procure the material on assessee’s behalf. The brokers used to collect purchase bills from the parties and used to supply to the assessee. The assessee used to make payment directly to the parties under instruction of the broker and for which commission and brokerage was paid by the assessee. Thus, the assessee submitted that it has purchased the goods and

duly made payment by way of cheque. The assessee claimed to have submitted certain documents before the AO, a list of documents produced by the Ld CIT(A) in para 4.3 of the impugned order is extracted as under for ready-reference:-

- [i] Purchase bills,*
- [ii] Bilty of transport on purchase,*
- [iii] Confirmation letter from party,*
- [iv] Confirmation from Bank/Bank Statement,*
- [v] Affidavit of Broker,*
- [vi] Sales Invoices for A.Y. 2013-14,*
- [vii] Bilty of transport on sale,*
- [viii] VAT return,*
- [ix] Stock summary for A.Y. 2013-14,*
- [x] Audit report.*

3. Further, the assessee submitted that it has been maintaining quantitative details of each and every transaction of purchase and sales in its financial books of accounts which were duly produced before the AO. According to the assessee, the transaction of the purchase cannot be doubted unless and until at the same time, the transactions of sales are doubted. Since the AO has not disputed the quantity of sale transaction, he was not justified in disbelieving purchases as shown by the assessee. In view of the aforesaid, the assessee submitted that it has discharged its onus in the matter and

there is no justification on the part of AO in making addition for alleged creditor. The assessee also submitted without prejudice that every purchase represented by entry of closing stock unless the sale took place. The corresponding entry of closing stock has to be made only to cancel the entry of purchase consequently, resulting in elimination of purchase. In other words, entry of closing stock nullified the impact of purchase, so that true profit as per books of accounts can be ascertained. Thus, according to the assessee, there was no impact of the treating the said purchase as bogus on the profit.

3.1. On further appeal, relying on the submissions of the assessee, Ld.CIT(A) deleted the addition by observing as under:-

**7.1.3 DECISION:-**“I have carefully considered the submission put forth & the documents furnished on behalf of the appellant, perused the facts of the case and the observation of the AO in the impugned assessment order and other material evidences brought on record. I have also considered the cases relied upon on behalf of the appellant.

**7.1.4.** To recapitulate, the facts of the case in brief are that the Assessing Officer is that in order to verify the genuineness of the sundry creditors, the Assessing Officer issued notices under sec. 133(6) of the Act to various creditors. In compliance with notice under sec. 133(6), reply was received, amongst others, from M/s P.G. Enterprises, 42, Vaikunthdham, Indore confirming the credit balances. Thereafter, in order to ascertain the genuineness of

confirmation, the Assessing Officer deputed his Tax-Assistant, who amongst other parties, contacted M/s P.G. Enterprises who denied to have had any transactions or having any credit balance with the appellant firm. According to the Assessing Officer, the denial was made by the partner of M/s P.G. Enterprises Shri Ramesh Kumar Pandey. A copy of the report of the Tax Assistant was provided to the appellant firm. The appellant firm vide reply dated 22/03/2016 submitted that it had made purchase from the party and made payments during the year. It was stated that as per trade practice followed by it, the transaction had been made through broker against which purchase bills and bilty were obtained and the payments were made through bank directly on account of party. It was also stated that the appellant could not understand as to why the party made the denial statement. However, the appellant firm furnished further evidence in support of its claim as under:

- (a) Copy of letter certified by the bank affirming the payments made to them during the year in question i.e. F.Y. 2012-13.
- (b) Copy of ledger of the creditor showing payments made in subsequent years.
- (c) Copies of purchase bills along with bilty and broker affidavit.

The Assessing Officer, however, noted that as per certificate issued by the bank in respect of P.G. Enterprises, the payments have been transferred in the name of M/s P.G. Enterprises but the account number has not been mentioned therein. The appellant was, therefore, asked to furnish the account number in which the payments have been transferred through RTGS transactions. There has not been any compliance on the part of the appellant in this regard from further enquiries, the Assessing Officer found that

*RTGS transfers have been made to the account no. 200013206015 in Ind Bank, Sapna Sangeetha Road Branch, Indore. This account number, according to the Assessing Officer, was opened on 12/09/2012 in the name of P.G. Enterprises having address 801, New LohaMandi, Paresh Tower, Kabin no. 103 and that this P.G. Enterprises is a proprietorship concern of one Jai Prakash Jindal. On these evidences, the Assessing Officer held that the account No. 200013206015 has nothing to do with the appellant's creditor M/s P.G. Enterprises, 42-Vaikunthdham, a partnership firm having PAN:AAHFP3981A, which was created in the year 1998 and one of its partners is Shri Ramesh Kumar Pandey S/o Shri Triveni Prasad Pandey. The finding of the Assessing Officer is that the purchase bills submitted by the assessee belonged to M/s P.G. Enterprises, 42-Vaikunthdham, Indore, a partnership firm having one of its partner Shri Ramesh Kumar Pandey, whereas the payments have been made to an altogether different P.G. Enterprises, 801, New LohaMandi, a proprietorship concern in the name of Shri Jai Prakash Jindal, and that the latter to be a non-genuine concern in the garb of M/s P.G. Enterprises, a partnership firm. It is in this back-ground that the assessee's claim of M/s P.G. Enterprises, 42, Vaikunthdham to be its creditor for an amount of Rs.3,92,25,466/- has been disbelieved and the purchase bills. pertaining to A.Y. 2013-14, submitted by the appellant for an amount of Rs.3,57,58,823/- issued by M/s P.G. Enterprises were held to be not genuine and added to the income of the assessee as unexplained cash credits.*

**7.1.5.** *The argument put forth on behalf of the appellant in nut shell is that the creditor had confirmed the credit in compliance with notice under sec. 133(6) of the Act. As regards denial letter*

*from M/s P.G. Enterprises obtained from one of the partners of the creditor firm, it is contended that it was the Tax Assistant Shri Vinay Kumar Sharma who was deputed to make field enquiries who has obtained denial letter from M/s PG Enterprises, Indore, which is not legally proper as Tax Assistants are not an authority within the meaning of section 116 of the Income Tax Act, 1961 and therefore they are not authorized to conduct any field enquiry. Any information obtained by tax assistants, thus, cannot be utilized against the appellant. Further argument is that the denial letter obtained from partner of the PG Enterprises is not on oath, and, therefore, it has no evidentiary value. Further argument is that the A.O. has not made any enquiry from Shri Jai Prakash Jindal so as to establish that the proprietor is not in any way connected with partnership firm M/s PG Enterprises, Indore. Thus, the claim of the appellant firm is that the addition of Rs.3,57,58,823/- is unjustified. The appellant has also relied upon a plethora of judgments in support of its claim.*

**7.1.6.** *There is no denying the fact that the creditor has not responded to the notice under sec. 133(6) of the Act confirming the credit. There is also no denying of the fact that the invoices/bills for the sales were issued by the said creditor, viz., M/s P.G. Enterprises, 46, Vaikunthdham, Indore. It is only the enquiry conducted through the staff of the office of the Assessing Officer that the denial came from the party regarding the sales effected to the appellant during the relevant year. The finding of the Assessing Officer revolved on the fact that the payments have been made to an altogether different P.G. Enterprises, 801, New LohaMandi, a proprietorship concern in the name of Shri Jai Prakash Jindal, and*

*that the latter to be a non-genuine concern in the garb of M/s P.G. Enterprises, a partnership firm.*

**7.1.7.** *Now, the fact is that the appellant firm has entered into the transaction through broker to whom commission has been paid and tax deducted thereon. The purchases are supported by bills for which payments have also been made through RTGS to the account provided by the broker/creditor. There is nothing on record to show that the entries of purchases in the books of account are mere accommodation entries and that the payment made for the purchases were received back by the appellant. In fact, the Assessing Officer has not make any enquiry with the party receiving the payment with that of the firm issuing the bills, nor had there been any enquiry to ascertain whether the partnership firm, M/s P.G. Enterprises was a dealer in the goods stated to have been purchased by the appellant, In fact, the payment to the broker for arranging the purchases has also not been doubted. The purchases are duly recorded in the books of account. The goods so purchased on credit are shown to have been sold during the year and payments made in the following year. The Assessing Officer has not suspected the sales, nor did he record any specific defect in the books of account. facts and in the circumstances of the case, it is a case, where the appellant has discharged his onus of proving the genuineness of the transaction. The appellant has done whatever was possible. The purchases and all the evidences thereof on record were not provided by the Assessing Officer as bogus by bringing any cogent material on record. Thus, the trade credits, in my view, stand explained.*

**7.1.8.** *In CIT Vs. Bholanath Poly Fab Pvt. Ltd. (2012) 83 CCH 275 Guj HC (2013) 355 ITR 290 (Guj) cited supra, the assessee was*

*engaged in business of trading in finished fabrics. AO held that certain purchases were unexplained and disallowed expenditure claimed. Tribunal held that though purchases were from bogus parties, nevertheless purchases themselves were not bogus, so not the entire amount, but profit margin embedded in such amount only would be subjected to tax. The High Court held, whether purchases themselves were bogus or whether parties from whom such purchases were allegedly made were bogus is essentially a question of fact. Tribunal had examined evidence on record and concluded that assessee did purchase cloth and sell finished goods. Thus not the entire amount covered under such purchase, but only the profit element embedded therein would be subjected to tax. Here, in the appellant's case, the trading results having been accepted, and no part of the sales having been held to be suppressed, even if it is assumed that part of the purchases are from bogus parties, the corresponding purchases and sales having been accepted, the profit element embedded in such alleged bogus purchases stands already disclosed and no further action is considered necessary in this regard.*

**7.1.9.** *In CIT vs. Pancham Dass Jain(2006) 205 CTR (All) 444 it was held that provisions of s. 68 are not attracted to amounts representing purchases made on credit. It was observed: The Tribunal has recorded a categorical finding of fact based on appreciation of materials and evidence on record that the AO had accepted the purchases, sales as also the trading result disclosed by the assessee. It had recorded a finding that the two amounts represented the purchases made by the assessee on credit and, therefore, the provisions of s. 68 could not be attracted in the present case. The view taken by the Tribunal on this issue is*

*sustainable inasmuch as, on the basis of the findings recorded by it that these two amounts represented purchases made by the assessee on credit and the purchases and sales having been accepted by the Department, the question of addition of the said two amounts under s. 68 did not arise inasmuch as the provisions of s. 68 would not be attracted on the purchases made on credit.*

**7.1.10** *Keeping in view my above findings and considering the entire facts of the case as well as submission advanced on behalf of the appellant, this issue of appeal relating to the addition of Rs.3,57,58,824/- on account of bogus purchases as unexplained cash credit is decided in favour of the appellant for the following reasons in brief :-*

*(i) The AO has issued notice under section 133(6) to M/s P. G. Enterprise, M/s Royal Enterprises and others. The notice was served and replied by M/s P.G. Enterprises Indore and M/s Royal Enterprises confirming the credit balance. Subsequently the AO deputed the Tax Assistant to verify the correctness of confirmation letters. In his report the Tax Assistant submitted that M/s P.G. Enterprises and M/s Royal Enterprise had denied any transaction with the assessee. This fact was informed to the assessee vide order sheet entry dated 15.03.2016. In the reply the assessee submitted before the AO, letter of bank certifying that payment was made by the assessee to M/s P.G. Enterprises. The assessee has also filed copy of purchase bills along with bill and affidavit of the broker through whom these purchases were made. The assessee also submitted that it had no dealing with Royal Enterprises during the previous year relevant to assessment year 2013-14.*

*(ii) As per the AO the RTGS payment was made to Indusind Bank account number 200013206015 in the name of P.G. Enterprises having its office at 801 New LohaMandiParesh Tower cabin number 103 Indore and Shri Jai Prakash Jindal was its proprietor. Whereas P.G. Enterprises of whose bills were submitted by the assessee in the assessment proceeding, is a partnership firm and Shri Ramesh Kumar Pandey is one of its partner. Since on the purchase bill the address of P.G. Enterprise was 42 Bekunthdham Indore whereas the payment was made to P.G. Enterprise 801 New LohaMandi for this reason, the AO held that the purchase bill of Rs. 3,57,58,823/- are not genuine and therefore treated the entire purchase of Rs. 3,57,58,823/- as unexplained cash credit and added the same to the income.*

*(iii) The assessee is a partnership firm carrying on trading of steel items and has several branches throughout the country. The assessee makes most of the purchase of steel items through brokers. In the previous year relevant to assessment year 2013-14, the assessee has purchased steel item of Rs. 3,57,58,823/- from M/s P.G. Enterprises. As per the Id AR these purchase are duly included in VAT return filed under the Madhya Pradesh Value added Tax. All the purchases from P.G. Enterprises are duly supported with purchase bill and bilty and the payment has been made through banking channel. Further the assessee has filed name address, PAN, confirmation letter of the creditor and has also filed the affidavit of the broker through whom the entire transaction has been made.*

*(iv) As per the IdAR, the assessee has kept the stock register and these purchases are duly reflected in this stock register. The assessee has furnished the quantitative detail of opening stock*

*purchase sale and closing stock. The correctness of these quantitative detail is not disputed by the AO. Further, the material sold out of these purchases is duly recorded in stock register as well as sale account.*

*The assessee has sold 794.06 MT of MS Steel purchased from PG Enterprises for Rs. 3,57,58,821/- to M/s Oriental Structure Engineering Pvt Ltd Chhindwara for Rs. 3,63,72,008/- and the payment from Oriental Structure Engineering was received by Account payee cheque. As per the Id AR, the AO has not given the assessee to cross examine the partner of P.G. Enterprise who has denied the transactions hence no cognizance of his denial shall be taken.*

*(v) In the case of CIT v Kashiram Textiles Mills P. Ltd. [2006] 284 ITR 61 the hon'ble Gujrat High Court has held as under :-*

*"10. Insofar as question No. 1 is concerned, the Tribunal has taken note of the fact that Revenue has not disputed the details of the closing stock. Therefore, the Tribunal has found, that in the facts and circumstances of the case, the existence of the raw materials purchased cannot be doubted, and if that is the situation, there could be no case for disputing the purchases. The Tribunal has further recorded that there was no material on record to conclude that in addition to the alleged fictitious purchases there were also some other purchases for the same material under different invoices which could be reflected in the closing stock. It is further recorded by the Tribunal that to the contrary, from the details submitted, even if such a doubt existed regarding existence of some purchases over and above the alleged fictitious purchases, the doubt on this*

*aspect was also removed. For this purpose, the Tribunal has by way of illustration analyzed the account of one of the items, appearing as Annex. '6' in the paper book filed before the Tribunal and come to the irresistible conclusion that quantity remaining in the closing stock is only out of the purchases effected by the assessee. It is in light of the aforesaid findings that the Tribunal has held that no addition was warranted on account of alleged fictitious purchases."*

*(vi) In the case of CIT v Bholanath Poly Fab Pvt Ltd [2013] 355 ITR 290 the hon'ble Gujrat High Court has held as under :-*

*6. We are of the opinion that the Tribunal committed no error. Whether the purchases themselves were bogus or whether the parties from whom such purchases were allegedly made were 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 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 v. CIT, 316 ITR 274 (Guj.). Such decision is also followed by this Court in a judgment dated 16.8.2011 in Tax Appeal No.679 of 2010 in the case of CIT v.Kishor Amrutlal Patel.*

*(vi) In the case of Bhagyanagar Oil Industries Ltd v ITO (ITA no 1178/Hyd/2012) decided on 12.06.2015 the hon'ble ITAT Hyderabad Bench 'B' has held as under :-*

6. We have heard both the sides and also perused the relevant material available on record. The learned D.R. has strongly relied on the order of the authorities below in support of the Revenue's case on this issue. However, as rightly submitted by the Ld. Counsel for the assessee, the impugned credits being trade credits of the assessee on account of purchase of sunflower seeds are not in the nature of cash credits as envisaged under section 68 and the same therefore cannot be added to the income of the assessee by invoking the said provision. Moreover, as pointed by him from the trading account of the assessee for the year under consideration placed at page No.24 of the paper book, the corresponding seeds purchased from the seven farmers for Rs.54,49,961 were sold in the year under consideration itself for Rs.58,89,195 and the said sale was duly credited to the trading account of the assessee. As rightly contended by the Ld. Counsel for the assessee, such sale not being possible without any corresponding purchases, so made could not otherwise be treated as bogus, despite the failure of the assessee to establish the identity of the concerned creditors/suppliers. It is also observed that the resultant profit arising from the relevant transactions of purchase and sale of sunflower seed was duly disclosed by the assessee in the trading account. Having regard to all these facts of the case, we are of the view that the addition made by the A.O. and confirmed by the CIT(A) by treating the trade creditors as unexplained cash credits under section 68 is not sustainable. We therefore delete the same and allow ground No.3 of assessee's appeal.

(vii) *In the case of Megha S. Shah v DCIT [2013] 38 CCH 76 the hon'ble ITAT Ahemdabad 'C' Bench has held as under :-*

*"11. We have heard the ld. D.R. and perused the material on record. CIT(A) while deleting the addition has noted that Mr. K.M. Sharma, whose statement was recorded, was not confronted or allowed to be cross-examined by the Assessee. CIT(A) has further noted that if the purchases were considered to be bogus, the corresponding sales should also have been excluded in arriving at the profit of the concern or it must be shown that the sales were made out of the stock acquired from unaccounted sources. She has further noted that no material has been brought on record to show that the sales related to the purchases were made from unaccounted income. She has further noted that the payments for purchases have been made by the Assessee by cheques and the payments for sales have also received through account payee cheques. Further, since the sales have been accepted totally by the A.O. CIT(A) was of the view that only the net profit could be estimated. CIT(A) has also relied on the decision of Gujarat High Court in the case of CIT vs. President Industries 258 ITR 654 and the decision of Madhya Pradesh High Court in the case of Manmohan Sadani vs. CIT 304 ITR 152."*

(viii) *In the case of Andaman timber Industries v Commissioner of Central Excise (2015) 94 CCH 0187 the hon'ble Supreme Court has held as under :-*

*"Not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a*

*serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority."*

**7.1.11** *In view of the foregoing discussion of facts and the emerging position of law emerging from the cases cited supra, I am of the view that the action of the Assessing Officer in treating the purchases to the extent of Rs. 3,57,58,823/- as bogus and in making the addition as unexplained credit under sec. 68 of the IT Act is unjustified. The addition of Rs. 3,57,58,823/- is, therefore, directed to be deleted."*

4. Before us, supporting the order of ld AO, the Ld.CIT DR submitted that it is undisputed fact that bills for purchase of steel products have been obtained in the name of M/s. P.G. Enterprises, 801, New Loha Mandi which is a proprietorship concern of Shri Jai Prakash Jindal. Thus, it is obvious that fictitious bills have been procured by the assessee either through brokers or through own

sources without actual purchase of the goods. He referred to Paper Book page 74 which is ledger account of 'Shri Moulik Anil Doshi'. In the said ledger account, commission has been shown to be provided from 09.04.2012 to 25.09.2012 for purchases shown to have been made on various dates from M/s. P.G.Enterprises. The Ld.CIT DR submitted that it is quite uncommon that the said party went on supplying goods to the assessee on credit for a period of almost six months. In the normal course, no dealer can keep the payment pending and still supplying goods. The payment shown to have been made by the cheque has been credited to proprietary concern of Shri Jai Prakash Jindal, the bank accounts for which was opened only on 12.09.2012 i.e. much after the purchase from PG Enterprise. The Ld.CIT DR submitted that in the facts and circumstances of the case, the assessee has purchased goods from grey market in cash and later on, obtained fictitious bills at the financial year end and in subsequent financial year shown to have made payment another PG Enterprises, which must have been received back as cash. The Ld.CIT DR submitted that the assessee has not explained any source of purchase made in cash, which is from unexplained sources and addition in the case of the assessee made by the AO should be upheld u/s 69A of the Act also.

5. On the other hand, the Ld. Counsel for the assessee has relied on the submissions made before Ld.CIT(A) and submitted that purchases in dispute are genuine purchases of the assessee. The Ld. Counsel for the assessee submitted that corresponding sales made to corporate entity have not been doubted by the AO. As no sales are possible without corresponding purchase of the goods, the AO is not justified in doubting the purchases without doubting these corresponding sales. He further submitted that the assessee is engaged in supplying steel products mainly to corporate and contractors etc. and goods are purchased from dealers across the India. Therefore, the assessee deals mainly with the brokers and they deal directly with the purchase parties. It was submitted that the assessee has duly obtained purchase bills and transport 'bilty' of the goods at the time of purchase and subsequently, made payment through the cheques, therefore, the assessee is not aware who was the real M/s. P.G.Enterprises. In view of the submissions, Ld. Counsel for the assessee submitted that findings of Ld.CIT(A) on the issue in dispute must be sustained.

6. We have heard Ld. Authorized Representatives of the parties on the issue in dispute and perused the relevant material available on record including Paper Book of the assessee containing page 1 to 289. Both the grounds raised by the Revenue relate to the sole issue of

addition for purchase of Rs.3,57,58,823/- which has been deleted by Ld.CIT(A). In the case, the credit appearing at the year end against purchases entered in the books of accounts of the assessee in the name of M/s. P.G. Enterprises, 42-Vaikunthdham, Indore, amounting to Rs.3,57,58,823/- is under cloud. The purchase bills are in the name of M/s. P.G. Enterprises, a partnership firm having address at 42-Vaikunthdham, Indore. The copy of ledger account of the PG Enterprises appearing the books of account of assessee, claimed to be duly confirmed by said party, is available on Paper book (PB)page-150. Relevant part of said confirmation is reproduced as under for ready reference:

<i>Date</i>	<i>particulars</i>	<i>Debit Amount</i>	<i>Date</i>	<i>Particulars</i>	<i>Credit Amount</i>
			1-Apr-2012	Opening Balance	1,56,66,643.00
			9-Apr-2012	Purchase-SELF	13,16,700.00
			13-Apr-2012	Purchase-SELF	12,53,963.00
			16-Apr-2012	Purchase-SELF	12,59,465.00
			21-Apr-2012	Purchase-SELF	12,95,805.00
			24-Apr-2012	Purchase-SELF	13,13,865.00
			30-Apr-2012	Purchase-SELF	11,95,950.00
			3-May-2012	Purchase-SELF	13,81,380.00
			7-May-2012	Purchase-SELF	12,98,588.00
			14-May-2012	Purchase-SELF	13,36,440.00
			19-May-2012	Purchase-SELF	12,59,685.00
			30-May-2012	Purchase-SELF	13,07,513.00
			4-Jun-2012	Purchase-SELF	12,94,125.00
			7-Jun-2012	Purchase-SELF	13,36,440.00
			26-Jun-2012	Purchase-SELF	13,09,350.00
			10-Jul-2012	Purchase-SELF	12,56,850.00
			14-Jul-2012	Purchase-SELF	12,56,640.00
			16-Jul-2012	Purchase-SELF	12,91,290.00
			20-Jul-2012	Purchase-SELF	13,47,413.00
			28-Jul-2012	Purchase-SELF	12,00,412.00
			2-Aug-2012	Purchase-SELF	13,76,760.00
			6-Aug-2012	Purchase-SELF	13,33,710.00
			11-Aug-2012	Purchase-SELF	13,67,373.00
			15-Aug-2012	Purchase-SELF	13,29,111.00
			30-Aug-2012	Purchase-SELF	13,31,925.00
			1-Sep-2012	Purchase-SELF	13,13,865.00
			6-Sep-2012	Purchase-SELF	13,61,115.00
			13-Sep-2012	Purchase-SELF	13,04,835.00

25-Sep-2012 Purchase-SELF 5,28,255.00

22-Feb-2013 Bank 25,00,000.00  
1-Mar-2013 Bank 25,00,000.00  
8-Mar-2013 Bank 9,00,000.00  
9-Mar-2013 Bank 9,00,000.00  
14-Mar-2013 Bank 36,00,000.00  
21-Mar-2013 Bank 9,00,000.00  
25-Mar-2013 Bank 9,00,000.00

	1,22,00,000.00	<u>5,14,35,466.00</u>
Closing Balance	<u>3,92,25,466.00</u>	
	<u>5,14,25,466.00</u>	<u>5,14,25,466.00</u>

6.1 Bare perusal of above ledger account shows that during the year under consideration the assessee was having opening outstanding of Rs. 1,56,66,643/- and has shown further purchases from the party since 9/4/2012 till 25/09/12 and total outstanding was of Rs. 5,14,25,466/-. The assessee has shown to have been made payment of Rs. 25,00,000/- for the first time on 22/02/13 and thereafter, total payment of Rs. 1,22,00,000/- is shown to have been paid till 31/03/13. It is not clear how this payment has been made and when same has been cleared from the bank account of the assessee. During the verification by the office of the AO, the partner of the said firm Shri Ramesh Kumar Pandey denied of having issued any bills or supplying goods to the assessee in the year under consideration. A copy of clarification made by Shri Pandey on behalf of M/s PG Enterprises is available on PB- 95. For ready reference, a scanned copy of said letter is reproduced as under:

# P. G. Enterprises

Architects, Engineers & Contractors

302-Vishwamlra Apartment, 42, Valkuntham, Indore (M.P.)  
Phone : 0731-2564713, 5561463, Mobile 98279-11499

10251023331

Dated: 11/02/16

To  
The Assistant Commissioner  
of Income-tax  
Circle, Sabra

Re: Your notice dt. 27/01/16 P. No. AC 11/Circle Sabra/133(6)2015-16/334

Dear Sir,

With reference to your above mentioned notice  
I have to state that I have <sup>done only</sup> construction work only under  
M.P Housing board and have no supply work. Hence, I  
have not supplied any material to Mr. Ram Kumar Suresh  
Kumar of Sabra. Having PAN No. AAFFR 389AD in the  
financial year 12-13 & earlier years. I have no business  
relation with the said firm now or ever.  
I am attaching a photocopy of my PAN of P.G.  
Enterprises & my individual PAN.

Thanking you,

Your faithfully  
For P. G. Enterprises,  
Pranalek  
Proprietor

TRUE COPY



6.2 On the other hand, the assessee has claimed to have made payment through banking channel to M/s. P.G. Enterprises but on verification by the AO, the said payment has been found to be transferred to another firm i.e. M/s. P.G. Enterprises, which is a proprietorship concern of Shri Jai Prakash Jindal and bank account in which the payment was transferred, was opened only on 12.09.2012 whereas M/s. P.G. Enterprises in whose names, bills have been issued and claimed to be an old established firm. The main defence of the assessee in the case is that **firstly**, the goods have been purchased through the broker and therefore, the assessee firm was not known to the purchaser or his whereabouts. Ld. Counsel for the assessee has referred to copy of the bill issued by the broker which is available at Paper Book pages 73 to 75. Ld. Counsel for the assessee also referred to the detail of Lorry Number through which said goods were claimed to have procured, a copy of which is available at pages 103 of the Paper Book. **Secondly**, the sales corresponding to the purchases have not been doubted. The Ld. Counsel for the assessee has further referred to page- 91 of the Paper Book which is mainly a summary of MS Steel inward and Outward quantity. In our opinion, the assessee cannot take shelter into the garb of the brokers for its wrongdoing and it is onus of the assessee to clear the doubts particularly, when the AO after detailed inquiry

against the non-cooperation by the assessee, has pointed out serious discrepancy of bills from one entity in current financial year and payment for the same in subsequent financial year to another entity having identical name. It can't happen without a coordinated design of fraud on the part of the assessee. It is not a case of normal conduct of the business that a supplier located at outstation would continuously go on supplying the goods to the assessee for entire financial year without any underlying security. Not only the supplier, but the so called broker Shri Moulik Anil Joshi has not been paid during the year and his entire brokerage of Rs. 2,21,850/- (excluding TDS of Rs. 24,650/-) was outstanding till financial year end as per details supplied by the assessee on PB-79. In the facts and circumstances of the case, only inference which could be drawn is that the assessee has purchased goods for sales from the grey market in cash and subsequently, at the end of the financial Year has obtained fictitious bills and for showing payment to said party, subsequently fictitious firm and bank account have been opened. The assessee has neither produced the broker nor produced the firm to whom the payment has been shown to have been transferred, for verification of the authorities and thus, it cannot be said that the assessee has discharged its onus for justifying the genuineness of the purchase and corresponding credits shown in the books of accounts

from M/s. P.G. Enterprises. Therefore, the addition made by the AO u/s 68 of the Act is justified.

6.3 In the case of the assessee, sales have not been doubted and therefore, it is logical inference that goods must have been procured by the assessee in cash for supplying to the parties to whom sales have been shown, for which source of expenditure of procuring from grey market in cash has not been explained and therefore, corresponding amount of the money for cash purchase becomes unexplained in the hands of the assessee. Therefore, without prejudice to the addition u/s 68 of the Act, alternatively, the addition u/s 69A of the Act is justified.

6.4 Therefore, we feel it appropriate to set aside the order of Ld.CIT(A) on issue in dispute and sustain the addition for unexplained expenditure of Rs.3,57,58,823/-. The Grounds raised by the Revenue are accordingly, allowed.

7. In the result, the appeal filed by the Revenue is allowed.

Order pronounced in the open Court on 22/09/2023.

**Sd/-**

**(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER**

**Sd/-**

**(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

*\*Amit Kumar\**

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar  
Jabalpur Bench