

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GD PADMAHSHALI, ACCOUNTANT MEMBER**

Sl. No.	ITA.No.	A.Y.	Name of Appellant	Name of Respondent	CIT(A)'s Order Appealed against with case no. & dated	Proceedings under section
1.	72/PUN./2021	2005-06	The DCIT, Circle-5, 3 rd Floor, PMT Bldg., Shankarsheth Road, Swargate, Pune - 411 037 Maharashtra.	Sailab Marketing Services Pvt. Ltd., 43/9-B, Karve Road, Erandwane, Pune. PIN - 411 004 PAN AAGCS4745P Maharashtra.	PN/CIT(A)- 1/DCIT	143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short "the Act").
2.	851/PUN./2023	2005-06	Sailab Marketing Services Pvt. Ltd., 43/9-B, Karve Road, Erandwane, Pune - 411 004 PAN AAGCS4745P Maharashtra.	The DCIT, Circle-5, 3 rd Floor, PMT Bldg., Shankarsheth Road, Swargate, Pune - 411 037 Maharashtra.	Cir.1(2)/202/1 0-11/42, dated 24.03.2020	
3.	849/PUN./2023	2005-06	Shri Purushottam R. Moghe [Dhanashree Enterprises], S.No.23/642, Gurudatta Society Dhankawadi, Pune - 411 043. Maharashtra. PAN ABNPM7676C	The DCIT, Circle-1(2), Pune.	PN/CIT(A)-1/DCIT Cir.1(2)/Pn./207/ 10-11, dated 23.03.2020	
4.	850/PUN./2023	2006-07	Gurudatta Society Dhankawadi, Pune - 411 043. Maharashtra. PAN ABNPM7676C		PN/CIT(A)-1/DCIT Cir.1(2)/203/ 10-11/42, dated 23.03.2020	
5.	73/PUN./2021	2005-06	The DCIT, Circle-5, 3 rd Floor, PMT Bldg., Shankarsheth Road, Swargate, Pune - 411 037 Maharashtra.	Shri Purushottam R. Moghe [Dhanashree Enterprises], S.No.23/642, Gurudatta Society Dhankawadi, Pune - 411 043. Maharashtra. PAN ABNPM7676C	PN/CIT(A)- 1/DCIT Cir.1(2)/Pn/207/ 10-11, dated 23.03.2020	
6.	66/PUN./2021	2006-07			PN/CIT(A)-1/DCIT Cir.1(2)/203/10-11, dated 23.03.2020	

For Revenue :	Shri Keyur Patel, CIT-DR with Shri Ramnath P Murkunde, Sr. AR
For Assessee :	Shri Sharad A Vaze

Date of Hearing :	26.09.2023
Date of Pronouncement :	09.10.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

The instant batch of six appeals pertains to two assessee's viz., Shri Purushottam R Moghe/individual and proprietor of Dhanashree Enterprises and Sailab Marketing Services Pvt. Ltd. All other relevant details stand duly mentioned in the foregoing cause title.

Heard these twin assessee's viz., Shri Purushottam R Moghe Enterprises and M/s. Sailab Marketing Services Pvt. Ltd., as well as the department at length. Case files perused.

2. It emerges at the outset during the course of hearing that all these cases involve identical set of facts since the learned lower authorities had taken recourse to sec.148/147 reopening mechanism to disallow their respective cash purchases based on various departmental and alleged CBI investigation(s) that one M/s. Blue Bird India Ltd., had entered into bogus sale purchase transactions with many other parties involving these twin assessees. We further note from a combined perusal of all these case files with the able assistance coming from both the learned representatives that the Assessing Officer(s) three re-assessments herein treated their respective trading business turnovers as bougs; being

accommodation entries only and also disallowed the corresponding purchases u/sec.40A(3); involving varying sums, respectively.

3. Coming to the CIT(A)'s orders, what we find is that he has assessed these twin assessee's turnovers as liable for gross profit addition(s) only since involving accommodation entries on the one hand followed by his impugned action deleting sec.40A(3) disallowance as no more maintainable once the corresponding books of account stand rejected.

This leaves both the sides aggrieved who have preferred their respective appeals before us.

4. The assessee's endeavor in this factual backdrop is that the CIT(A)'s identical action herein is not sustainable in law and on facts as he has assessed the impugned gross profit @ 2% which is highly exorbitant in case of accommodation entries whereas the department stand before us in its corresponding three appeals is that the Assessing Officer had rightly made the respective disallowances hereinabove (supra) which deserve to be upheld in entirety.

5. We have given our thoughtful consideration to the foregoing vehement rival stands. The Revenue has placed this tribunal's learned coordinate bench's order in M/s. Blue Bird India Ltd.'s case (supra) for the very twin assessment years

2005-06 and 2006-07 settling the issue at rest that the said latter entity had not engaged itself in any kind of accommodation entries. Shri Keyur Patel and Shri Ramnath P. Murkunde took us to the learned coordinate bench's order in Revenue's appeals ITA.Nos.674 & 964/PUN./2009 as well as assessee's cross-appeals ITA.No.900/PUN./2009 and C.O.No. 33/PUN./2010 in M/s. Blue Bird's case, decided on 06.09.2012 as under :

“ITA No. 674/PN/2009 (A.Y. 2005-06) (By Revenue) :

2. *Facts of the case, in brief, are that the assessee company derives income from manufacturing of note books, guides, other books and printing materials. It filed its return of income on 31-03-2006 declaring total income at Rs.21,07,46,680/-. During the assessment proceedings the AO noted that a survey was conducted on the business premises of M/s. Swapnil Distributors Pvt. Ltd., (SDPL) on 13-02-2007 according to which the assessee has purchased goods worth Rs.1.04 Crores from it. In the case of M/s. Swapnil Distributors Pvt. Ltd. i.e. SDPL the AO vide assessment order dated 09-06-08 for A.Y. 2005-06 had held that the purchases of SDPL are not verifiable. The AO extracted the relevant observations of the AO in the assessment order dated 09-06-08 of M/s. Swapnil Distributors Pvt. Ltd. for A.Y. 2005-06. He noted that the assessee has made total purchase of Rs.330.62 Crores during the relevant period out of which purchases worth Rs.253.73 Crores have been made from the following parties :*

(i)	M/s. Swapnil Distributors Pvt. Ltd.	Rs. 1,04,05,880/-
(ii)	M/s. Naira Distributors Pvt. Ltd.	Rs. 55,06,270/-
(iii)	M/s. Dhanshree Enterprises	Rs. 21,53,65,479/-
(iv)	M/s. Laukik Paper Industries Pvt. Ltd.	Rs.230,60,48,860/-
	TOTAL	----- Rs.253,73,26,939/- -----

3. The AO recorded the statements of the Managing Director/Proprietors of M/s. Nairs Distributors Pvt. Ltd., M/s. Dhanshree Enterprises and M/s. Laukik Paper Industries Pvt. Ltd.. He noted that the above 3 parties have made purchases in cash in the similar way as discussed in the case of M/s. Swapnil Distributors Pvt. Ltd. These 3 suppliers have made payments in cash in contravention of provisions of section 40(A)(3). These 3 suppliers have made payments after getting the LCs discounted in the similar way as M/s. SDPL. These 3 parties have supplied goods directly to the assessee and they have not stored it. He further noted that these 3 parties except M/s. Laukik Paper Industries Pvt. Ltd. are new in this trade and are not aware of brands/quality of goods purchased and sold to the assessee. The AO confronted the modus operandi adopted by the assessee and asked the assessee to explain why its books of accounts should not be treated as incorrect and incomplete. It was explained by the assessee that it had made purchases from various other parties also including the 4 parties named by the AO. The confirmation certificates from various creditors, various sundry debtors, Xerox copies of the purchase invoices duly verified by the bank authority before discounting the LCs in favour of the 4 parties were filed before the AO. The assessee has also made detailed submissions before the AO to the proposition that the entire purchases done by it is genuine and the books of accounts should not be rejected.

4. However, the AO was not satisfied with the explanation given by the assessee and rejected the books results. He enhanced the sales to Rs.360 Crores and after adopting the GP rate of 15% made addition of

Rs.8,98,57,000/- being the difference between GP determined by him and the GP shown by the assessee by holding as under :

“3.2 The above plea is not acceptable because :

(i) The purchases in bulk have been made from four parties as mentioned above. These purchases are not fully verifiable when investigated in depth as is evident from the fact mentioned in the assessment order of the SDPL for A.Y. 2005-06. Since the facts in other cases are similar to that of SDPL, therefore, the same inference is drawn in other cases.

(ii) Sales are also not verifiable as mentioned above. Non maintenance of addresses of parties from whom cash realization have been shown is not understandable. Every prudent business man will maintain the details of correspondences of such parties for its future business. The probability of sales effected to such parties in the subsequent period cannot be ruled out.

(iii) Most of the sales are not verifiable.

(iv) The purchases from the four parties as mentioned above area also not fully verifiable.

(v) Day to day quantitative details of loss in the manufacturing process is not maintained.

3.3 In view the reasons stated above, the facts emerged are that the purchases and sales are not fully verifiable and therefore, the books of the accounts suffer from various defects, which warrant the rejection of its books of accounts u/s.145 of the I.T. Act. Thus I am not satisfied about the correctness and completeness of the accounts of the assessee. Therefore, the books of accounts are rejected u/s. 145 of the I.T. Act and the income therefore, is completed in the manner prescribed u/s.144 of the I.T. Act. Since the sales are not verifiable,

therefore, in the view of the reasons stated above, the sales of the assessee is estimated at Rs.360 Crores instead of net sale of Rs. 330.79 Crores shown by the assessee.

3.4 The profit shown in the books of accounts are not acceptable. The actual gross profit rate shown by the assessee is 12.97% though it has shown @ 13.02% in the audit report submitted in form 3CD. The gross profit ratio in this range varies from 12% - 20%. The gross profit ratio of Sundaram Multi Pap. Ltd. as seen on e-net is 19.80% for the relevant period. The assessee was so caused to explain that why the gross profit ratio of 19.80% in the case of Sundaram Multi Pap. Ltd. for A.Y. 2005-06 may not be applied. In response to this query the assessee has submitted a reply that its case is quite different than Sundaram Multi Pap Ltd. for A.Y. 2005-06. The facts of these two cases are not worth to compare. The facts of Sundaram Multi Pap Ltd. for A.Y. 2005-06 as mentioned in the assessee's reply are extracted below :

(a) "Turnover of our company is 330.79 Crores as against the turnover of Sundaram Multi Pap. Ltd. is 55.60 Crores.

(b) Our company deals in various type of products such as note books, office stationery, print publication whereas Sundaram Multi Pap. Ltd. Co. deals in the note books and school paper stationery product.

(c) Employee cost in case of our company is 1.79 Crore whereas in case of Sundaram Multi Pap Ltd. it is only 0.72 Crore.

(d) Other manufacturing expenses in case of our company is 4.71 crore whereas in case of Sundaram Multi Pap Ltd. it is 3.10 crore.

(e) Selling and administration expenses in case of our company is 8.83 Crore whereas in case of Sundaram Multi Pap. Ltd. it is 5.87 Crore.

- (f) *Interest and finance charges in case of our company are at Rs. 6.28 Crores whereas in case of Sundaram Multi Pap. Ltd. it is 1.58 Crore.*
- (g) *The depreciation in case of our company is 1.08 crore whereas in case of Sundaram Multi Pap. Ltd. it is 0.42 Crore.*
- (h) *Net profit before tax in case of our company is 27.53 Crore whereas in the case of Sundaram Multi Pap. Ltd. it is 2.02 Crore in terms of percentage it works out to 8.32% whereas it is 3.63% in case of Sundaram Multi Pap. Ltd.*
- (i) *Share Capital of our company is at Rs.25 Crores whereas in case of Sundaram Multi Pap. Ltd. it is 3.25 Crore.*
- (j) *Fixed assets in case of our company are at Rs.31.97 Crore whereas in case of Sundaram Multi Pap. Ltd. it is 8.80 Crore.*
- (k) *Investment in inventories in case of our company is 87.84 crore whereas in case of Sundaram Multi Pap. Ltd. it is 11.72 Crore.*

3.5 The assessee's arguments are taken into consideration. Keeping in view the facts stated above and the gross profit ratios of other business concerns, the gross profit rate of 15% is taken into account at enhanced sale of 360 Crores for working out the income of the assessee. The gross profit @15% on enhanced sales of RS. 360 Crores works out to Rs.54,00,00,000/- as against Rs.45,01,43,000/- shown by the assessee. The addition on this score therefore, works out to Rs.8,98,57,000/-, which is added back into the income of the assessee.

5. In appeal, the assessee made detailed submissions challenging the enhancement of the turnover and adoption of GP at 15%. The audit report of the special auditors u/s.142(2A) appointed by the AO was also brought to the notice of the CIT(A). On the basis of the various submissions made by

the assessee the CIT(A) directed the assessee to submit a copy of the written reply to the AO for his verification which the assessee complied with. After considering the submissions made by the assessee as well as the AO the CIT(A) deleted the addition of Rs.8,98,57,000/- by holding as under :

“ 4.3 I have carefully considered the submission of the appellant and perused material on record. From the perusal of material on record, following aspects emerge :

(i) As regards the purchases the genuineness of which has been doubted by the Assessing Officer, it may be mentioned that the approach of the Assessing Officer on the issue suffers from inconsistencies and contradictions. In case of Swapnil Distributors for assessment year 2004-05, the conclusion of the Assessing Officer was that though the purchases of Swapnil Distributors Pvt. Ltd., were from parties other than those from whom purchases were shown, the fact of sale by Swapnil Distributors to Blule Bird (India) Ltd., is not questioned in the assessment proceedings of Swapnil Distributors, how can the purchase of BBIL from Swapnil Distributors Pvt. Ltd., be questioned in assessment proceedings of Blue Bird (India) Ltd? It is clear that the Assessing Officer's approach in this regard is contrary to the facts on records. Since the position of purchases from other three parties, namely Nairs Disttributors Pvt. Ltd., M/s. Dhanshree Enterprises and M/s. Laukik Paper Industries Pvt.Ltd. is the same as that in case of purchases from Swapnil Distributors, what is said about the purchases from Swapnil Distributors Pvt. Ltd. applies to purchases from these parties also. For reasons given in the appellate order dated 18-03-2008 passed by this office in the case of M/s.Swapnil Distributors Pvt. Ltd. in appeal No. PN/CIT(A)-/I/ACIT, Rg-1/31/08-09, the Assessing Officer's conclusions regarding the genuineness of purchases made by Swapnil Distributors Pvt. Ltd. have been held to be unacceptable and additions made by the Assessing Officer in this regard have

been deleted. Since the position is similar in respect of purchases from other three parties by the appellant, it is held that conclusions of this office in respect of purchase from Swapnil Distributors Pvt. Ltd., apply to those purchases also and Assessing Officer's conclusions in this regard are held to be without any cogent and relevant basis and hence, unacceptable. The sales effected by the appellant company are credit sales and admittedly, address of the parties to whom credit sales have been made have not been submitted by the appellant and the sale proceeds in a large number of cases have been received in cash. Thus, in the absence of address in case of parties from whom payments have been received in cash, the sales are not verifiable. Thus, sub-section (2) of section 145 of the Income Tax Act, 1961 clearly applied because books of accounts cannot be said to be complete in the absence of address of the parties to whom the sales have been made. However, for coming to a conclusion that books of accounts are not correct, some instances of understatement of sales and/or suppression of sales have to be brought on record and incorrectness of books of accounts cannot be presumed. This has not been done. On the other hand, Special Auditors appointed u/s.142(2A) of the Income Tax Act, 1961 has clearly mentioned that 'the rate at which the assessee company has purchased the goods and sold them in the market are comparable and in line with the existing rates of similar commodities in the market'. The Special Auditors further point out at the end of paragraph 13.4 of the Special Audit Report that 'similarly, the transaction of sale with the two parties referred to in our letter are genuine and does not appear to be in nature of accommodation transaction'. In view of this and in view of the comments of the Special Auditor regarding trading account and verification of sales with reference to sales tax order, it is clear that there is no material on record for coming

to the conclusion that books of accounts of the appellant are not covered within the meaning of section 145(2) of the Income Tax Act, 1961.

(iii) The appellant has maintained quantitative details of opening and closing stock of purchases, consumption of raw material (principal items) and sale of finished goods both in terms of quality and value. No discrepancy in this regard has been detected during the course of special audit.

(iv) It is a fact that appellant has shown sales of Rs. 330.79 Crore and these sales comprise of sale to following :

- (i) Sales to limited companies*
- (ii) Sales to Govt. Parties*
- (iii) Export Sales*
- (iv) Sales to customers from various branches
Any dealers network throughout the country*

Thus, the payments on account of export sales and sales from outside Maharastra parties have been received through cheque. Similarly, payment on account of sale to Govt. parties have been received through cheque. The sale which is unverifiable because of lack of address is the sale which has been made on credit in respect of which realization of sale proceeds is received in cash. In respect of such sales no material is adduced by the Assessing Officer to the effect that such sales has been understated, no instances of suppression of sale has been brought on record either by the learned Assessing Officer or by the special auditor. As mentioned hereinbefore, as per the report of the Special Auditor, the rate at which the assessee company has purchased the goods and sold them in the market are comparable and in line with the existing rates of similar commodities in the market.

(v) As mentioned hereinbefore, the purchases in the case of Swapnil Distributors have been held to be genuine for the reasons given in the appellate order passed by this office on 18-03-2009 in

case of Swapnil Distributors Pvt. Ltd. The purchases from other parties are of similar nature according to the Assessing Officer. In view of this, conclusion given in respect of Swapnil Distributors Pvt.Ltd. applies with equal force to the purchases from the other three parties namely, Nairs Distributors Pvt. Ltd. Dhanashree Enterprises and M/s. Laukik Paper Industries Pvt. Ltd. Therefore, the conclusion of the learned Assessing Officer in respect of purchases from these concerns is held to be erroneous and unacceptable.

4.3.1 In view of the foregoing discussion, submission of the appellant, report of the Special Auditor, judicial decisions cited by the appellant and material on record, it is held that there is no justification whatsoever for increasing the turnover of the assessee from Rs.330.79 Crore to Rs.360 Crore. The Assessing Officer's conclusions in this regard pertaining to increase of turnover are held to have no basis in law and on facts and are totally erroneous. Accordingly, it is held that there is no justification for increasing the turnover from Rs.330.79 crore to Rs.360 crore.

4.3.2 As regards the increase of Gross Profit from 12.97% to 15%, it may be mentioned that the gross profit can be increased only if expenses are unverifiable or there is understatement or suppression of sales. The learned Assessing Officer has failed to adduce any cogent material on both the aspects. The conclusion of the learned Assessing Officer in this regard have no cogent and relevant basis.

The learned Assessing Officer himself points out that the G.P. In this line of business ranges from 12-20%. If this is so and appellant has shown G.P. of 12.97%, there is no justification for increasing it to 15%. According to the Assessing Officer, the G.P. of Sundaram Multi Pap Ltd. is 19.80% though such G.P. is found to be lower much lower at 6.4% as is clear from the figures submitted from the various financial websites extract of which is reproduced hereinbefore. However, the learned Assessing Officer himself impliedly accepts that

there is difference between the nature of business of the appellant and that of Sundaram Multi Pap Ltd. when he does not apply higher gross profit of 19% which has been shown by Sundaram Multi Pap Ltd. though it is a different matter that according to appellant the G.P. rate of Sundaram Multi Pap Ltd. is much lower as is clear from the data taken from the financial websites 'rediffmoneywiz and moneycontrol.com'.

4.3.3 During the course of appellant proceedings it was submitted that the business of the appellant is quite different from that of Sundaram Multi Pap Ltd. In view of this and in view of the fact that the assessee has made sales at comparable rate and market rate as is clearly mentioned by the Special Auditor in the Special Audit Report and the fact that the learned Assessing Officer failed to adduce any instances of unverifiable expenditure debited to the Profit & Loss account and any instances of understatement or suppression of sales, there is no justification whatsoever for increasing the G.P. of the appellant from 12.97% to 15%. It is held that the Assessing Officer's action in this regard has no basis.

4.3.4 In view of the foregoing discussion, comments of the Special Auditor in the special audit report regarding manufacturing and trading account, purchases and sales of appellant being verifiable, quantitative details maintained by the appellant in respect of principal items of raw material and finished goods, submission of the appellant hereinbefore and material on record, there is no justification for increasing the gross profit rate of the appellant from 12.97% to 15%.

4.3.5 In view of the foregoing discussion, the action of the Assessing Officer in enhancing the turnover of the appellant from Rs.330.79 crore to Rs.360 crore and applying higher G.P. rate of 15% as against 12.97 shown by the appellant are held to be without any basis and unjustified on facts and in law. Accordingly, the addition made by the Assessing Officer at Rs.8,98,57,000/- is hereby deleted”.

6. *Aggrieved with such order of the CIT(A) the revenue is in appeal before us with the following grounds :*

“1. On the facts in the circumstances of the case, the learned CIT(Appeals) erred in deleting the addition of Rs.8,98,57,000/- made on account of estimation of sales at Rs. 360 crores and estimated G.P. @15%.

2. On the facts in the circumstances of the case, the learned CIT(Appeals) erred in not considering the fact that credit sales and purchases are not fully verifiable.

3. The order of the CIT(Appeals) may be vacated and that of the AO restored”.

7. *The learned DR heavily relied on the order of the AO. He submitted that since the sales are not properly effected and the GP rate declared by the assessee is lower than the comparable cases given by the AO, therefore, the AO was justified in rejecting the book results and thereby enhancing the turnover to Rs.360 crores and adopting the GP rate @ 15%.*

8. *The learned counsel for the assessee on the other hand reiterated the same submissions as made before the AO and the CIT(A). He submitted that the main allegation of the AO for rejecting the purchases from various concerns is due to his order passed in the case of Swapnil Distributors Pvt. Ltd. He submitted that in the case of Swapnil Distributors Pvt. Ltd. the sales to Blue Bird India Pvt. Ltd. was never questioned by the AO. Therefore, now questioning the purchases by Blue Bird India Pvt. Ltd. from Swapnil Distributors (P) Ltd. is not justified. He submitted that the special auditors appointed by the AO u/s.142(2A) have mentioned that the rate at which the assessee company has purchased the goods and sold them in the*

market are comparable and in line with the existing rates of similar commodities in the market. Nothing adverse has been mentioned by the special auditors appointed by the AO to suggest that the books maintained by the assessee are defective. He submitted that the assessee has maintained quantitative details of opening and closing stock of purchases, consumption of raw materials (Principal) and sale of finished goods both in terms of quality and value. No discrepancy in this regard has been detected during the course of special audit. Further the assessee sells the goods to Government agencies, Private Distributors and various Limited Companies. No action in the hands of any of the party has been taken by the AO. Most of the payments have been received through account payee cheques. Referring to the decisions reported in 129 ITD 1 (Third Member), 59 TTJ 698 and 30 TTJ 130 he submitted that sales cannot be enhanced unless the AO has corroborative evidence. He accordingly submitted that the order of the CIT(A) rejecting the enhancement of the sales by the AO is justified.

9. *So far as the adoption of GP rate @15% he submitted that the case compared by the AO in the case of Sundaram Multi Pap Ltd. is not comparable with that of the assessee. Referring to Para 3.4 of the Assessment Order the learned counsel for the assessee drew the attention of the Bench to the distinctions between the assessee and Sundaram Multi Pap Ltd. He submitted that the AO himself has mentioned in the assessment order that the GP in this line of business ranges from 12% to 20%. Since the assessee in the instant case has shown GP rate of 12.97% which is more than 12%, therefore, he is not justified in rejecting the GP shown by the assessee and enhancing the same to 15%. He accordingly submitted that the*

order passed by the learned CIT(A) is just and proper and should be upheld and the grounds raised by the revenue should be dismissed.

10. *We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find in the instant case the AO rejected the book results on the ground that purchases and sales are not fully verifiable and the GP rate shown by the assessee is lower than some of the cases engaged in similar line of business. For coming to this proposition he considered the order of the AO in the case of Swapnil Distributors Pvt. Ltd. for A.Y. 2005-06 wherein the purchases made by Swapnil Distributors Pvt. Ltd. have been doubted as not genuine by the AO. For the reasons stated therein the AO came to the conclusion that the purchases from various parties made by the assessee should be held as non genuine because of the same modus operandi. However, we find that against the order passed by the AO in the case of Swapnil Distributors Pvt. Ltd. the CIT(A) had deleted the additions made by the AO on account of investment in unexplained purchases. When the revenue filed appeal before the Tribunal the Tribunal vide ITA No. 675/PN/2009 order dated 31-03-2012 has dismissed the appeal filed by the revenue by holding as under :*

“12. *We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the voluminous Paper Book filed on behalf of the assessee. We find the AO disbelieved the purchase of papers by the assessee*

company from the two firms, namely Komal Enterprises and M/s. Pritam Enterprises on the ground that :

- (a) all these purchases have been done only in two days;*
- (b) Payments have been done in cash after the purchases, i.e.29-03-05 and 30-03-05;*
- (c) All expenditure including sales tax, freight, handling charges etc. have not been properly accounted for and*
- (d) since sales have been made therefore purchases have been done but not from the parties whose name appear in the books and the purchases might have been done from some third parties in cash.*

13. *In view of the above, the AO came to the conclusion that the payments for the purchases made from some other parties other than the two parties shown by the assessee have been done out of unexplained/unaccounted sources to that parties prior to the date shown in the books of accounts. Thereafter the assessee has regularised such expenditure by showing the purchases. In view of the above, the AO made addition on account of investment in unexplained expenses and freight and handling charges and made addition of Rs.1,01,50,000/- as per Para 7 of this order.*

14. *We find the learned CIT(A) after considering the statement of Sri Arun P. Madania, authorised person of Selection Mercantile Company Pvt. Ltd., Sri Ashok Pande, partner of Sahil Transport Company and Ramesh Padmanabhan, Chief Manager of Federal bank of India which was providing credit facilitates to Blue Bird India Pvt. Ltd. to whom the assessee has made sales accepted the purchases made by the assessee company as genuine. While doing so, he*

has also considered the report of the special auditors appointed by the AO u/s.142(2A) who have mentioned that the purchases effected by the assessee company as well as the corresponding sales are genuine and are duly supported by evidences. Under these circumstances and in view of the detailed order passed by the learned CIT(A) which has already extracted at para 8 of this order we find no infirmity in the same. Accordingly, we uphold the same and the grounds raised by the assessee are dismissed.”

11. *We find the special auditors appointed u/s.142(2A) by the AO have mentioned that the rate at which the assessee company has purchased the goods and sold them in the market are comparable and in line with the existing rates of similar commodities in the market. The special auditors have not given any adverse comments about the purchase and sales effected by the assessee. We find the assessee has maintained quantitative details of opening and closing stock of purchases, consumption of raw material (principal items) and sale of finished goods both in terms of quality and value. No discrepancy in this regard has been detected during the course of special audit. We also find that the assessee has made sales to Government agencies and Limited Companies apart from export sales and sales to various customers from different branches. Most of the payments have been received by account payee cheques.*

12. *We find merit in the submission of the learned counsel for the assessee that sales cannot be enhanced unless the AO has got any corroborative evidence. Nothing has been brought on record to show that the assessee has received any extra money outside the books*

against such unaccounted sales. Similarly, nothing has been brought on record to show that assessee has inflated the purchases or made bogus purchases for which payments have been made and the same has come back to the assessee.

13. *So far as the adoption of GP@15% we find the AO himself in the body of the assessment order has mentioned that GP in this line of business ranges from 12% to 20%. Since the assessee in the instant case has shown GP @ 12.97% which is more than 12%, therefore, we find no justification to adopt higher rate of GP at 15%. We further find the AO has not brought anything on record to show that the various expenses declared by the assessee in the profit & loss account are either unverifiable or bogus or there is under statement or suppression of sales or enhancement of purchases. Further the comparable case given by the AO in the case of Sundaram Multi Pap Ltd. is distinguishable in view of wide variation in turnover, employee cost, manufacturing expenses, selling and administrative expenses, interest and finance charges, depreciation on fixed assets, investment in inventories and share capital etc. which have been incorporated at Para 3.4 of the Assessment Order. Under these circumstances, we are of the considered opinion that the AO was not justified in enhancing the sales to Rs.360 crores and adopting GP rate at 15% on the same. In this view of the matter and in view of the detailed order passed by the CIT(A) deleting the addition made by the AO, we find no infirmity in the order of the learned CIT(A) on this issue. Accordingly, the*

order of the CIT(A) is upheld and the grounds raised by the revenue are dismissed.”

6. The Revenue further sought to buttress the point that the so far as the issue of sec.40A(3) disallowance of cash purchases in all these cases is concerned, these twin assesseees' had themselves declared the same in their respective returns filed before the Assessing Officer. It accordingly pleaded that the Assessing Officer's all findings deserve to be restored in these twin assesseees' respective cases as the CIT(A) has not considered the tribunal's foregoing clinching decision in the impugned lower appellate orders.

7. Learned counsel representing the assesseees on the other hand has quoted this tribunal's very recent order in yet another entity M/s. Laukik Paper Industries (P) Ltd., involving assessment years 2003-2004 to 2006-07, as the case may be, decided on 24.04.2003, still assessing G.P. only after holding that it was an instance of accommodation entry wherein sec.40A(3) disallowance is not sustainable after rejection of books. Learned counsel accordingly submitted that not only sec.40A(3) disallowances herein does deserves to be deleted but also these twin assesseees' are entitled for reduction in G.P. which has been assessed at a very exorbitant rate of 2% in the CIT(A)'s respective orders under challenge.

8. We find part merit in the Revenue's foregoing submissions. This is in light of the clinching fact that the learned lower authorities had found these twin assesseees' as well as various other entities to have sourced their purchases from, and to, as the case may be, M/s. Blue Bird India Ltd., which in turn, was found to be engaged in providing accommodation entries. We further wish to reiterate that this so-called accommodation entry provider entity's book results as well as turnover have been found to be genuine in this tribunal's learned coordinate bench's order. The necessary corollary that flows therefrom is that once M/s. Blue Bird India Ltd., has been held to be a genuine entity which was seriously doubted so as to give rise to all these sec.148/147 proceedings, we must necessarily hold that all the corresponding sale/purchase book results of these assesseees must also deserve to be accepted in toto since not based on any other independent finding. That being the case, we must also hold that the learned lower authorities action, more particularly, that of the Assessing Officer rejecting books as well as disallowing sec.40A(3) cash purchases deserve to be upheld *qua* the latter issue only as these twin assesseees' had themselves recorded the same in their returns submitted but also there is no justification of their part in justifying the respective cash purchases as per Rule 6DD of the I.T. Rules, 1962. The very factual position continues before us as well as

these twin assessee's identical endeavor is only to reduce the gross profit estimation than explaining the mitigating circumstances/business exigencies in making cash purchases. Faced with the situation, we conclude that these twin assessee's respective book results ought to be treated as genuine, which in turn, forms sufficient material for us to revive the Ld. Assessing Officer(s) identical action to the extent he had made sec.40A(3) disallowance, involving varying sums, in all these cases. The Revenue's stand is partly accepted to this limited extent in all of its instant three appeals ITA.Nos.72, 73 & 66/PUN./2021.

9. Learned counsel's again placed reliance on this tribunal's order in M/s. Laukik Paper Industries (P) Ltd., (supra) that only gross profit deserves to be estimated in case of accommodation entries. We don't deem it as a fit case for rejecting these twin assessee's book results for the purpose of holding that they are mere entry providers since all the relevant evidence(s) already form part of record. These twin assessee's as many cross appeals ITA.Nos.849, 851/PUN./2023; as the case may be, stand rejected in very terms therefore.

10. We make it clear before parting that we have not incorporated all the relevant figures in these twin assessee's

respective turnovers as well as sec.40A(3) disallowances, as the case may be, for the sake of brevity.

No other ground or argument has been pressed before us.

11. These Revenue's three appeals ITA.Nos.72, 73 & 66/PUN./ 2021 are partly allowed and the instant twin assessee's respective cross appeals ITA.Nos.849, 850/PUN./ 2023 & ITA.No.851/PUN./2023 stand rejected in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 09.10.2023.

Sd/-
[GD PADMAHSHALI]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 09th October, 2023

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The CIT(A)-1, Pune.
4.	The Pr. CIT-1, Pune.
5.	D.R. ITAT – 'A' Bench, Pune.
6.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,
Pune.