

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

BEFORE

DR. BRR KUMAR, ACCOUNTANT MEMBER

AND

MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 8005/Del/2018
Asstt. Year: 2008-09

Vikram Vadhera 4122-B, Ajmeri Gate, DELHI - 110 006 PAN AAGPV7075G (Appellant)	Vs.	ITO Ward- 46(1) New Delhi. (Respondent)
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Assessee by:	None
Department by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing:	29.08.2023
Date of pronouncement:	31.10.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 27.06.2018 of the Ld. Commissioner of Income Tax (Appeals)-16, New Delhi (**"CIT(A)"**) pertaining to Assessment year (**"AY"**) 2008-09.

2. The assessee has taken the following grounds of appeal:-

- "1. *That the Learned Commissioner of Income Tax (Appeals) -16, New Delhi has erred in deciding the appellate proceedings by confirming the additions made by the learned Assessing Officer without providing a reasonable opportunity to the appellant to submit and substantiate his claim on the additions made by the Learned Assessing.*

2. *That the Learned Commissioner of Income Tax (Appeals) -16, New Delhi has erred in confirming an addition a sum of Rs.3,95,308.00 on account of purported unverifiable purchases claimed by the appellant...*
3. *That the Learned Commissioner of Income Tax (Appeals) -16, New Delhi has further erred in not appreciating the fact that the addition has been made after reopening of assessments in spite of the fact that the Learned Assessing Officer did not follow the procedure of reopening the assessments once the original assessment was also completed u/s 143 (3) of the Act.*
4. *That it is accordingly prayed that the additions confirmed by the Learned Commissioner of Income Tax (Appeals) may kindly be deleted.”*

3. Briefly stated, it is a case of re-assessment. Original assessment was made on total income of Rs. 3,53,530/- on 29.12.2010 under section 143(3) of the Income Tax Act, 1961 (**the “Act”**). It was re-opened under section 147 of the Act and notice under section 148 dated 27.03.2015 was issued and served upon the assessee. During re-assessment proceedings, the Ld. Assessing Officer (**“AO”**) required the assessee to produce the proprietors of M/s. Vee Vee Enterprises run and controlled by Shri Navneet Jain and Shri Vaibhav Jain who are in the business of providing accommodation entries as the assessee had shown purchases of Rs. 3,95,508/- from them. On failure of the assessee to produce them, the Ld. AO issued summons under section 131 of the Act which was received back with the remark “left without address”. Since genuineness of the said purchases could not be established by the assessee, the Ld. AO added the same to the income of the assessee under section 69 of the Act and completed the re-assessment on total income of Rs. 7,50,840/- on 21.03.2016 under section 147/143(3) of the Act.

4. Aggrieved by the aforesaid addition the assessee filed appeal before the Ld. CIT(A) who confirmed the impugned addition by observing and recording the following findings:-

“4.8 The argument of the appellant that why should there be a sale bill on the purchases of bogus purchases is rejected for the simple reason that accommodation entries are not in thin air. A bogus purchase has all the ingredients of purchase other than the physical delivery of goods because no

goods exists or ever existed with the entry provider. The set that sale has been recorded against the bill does not make the bogus purchase genuine.

4.9 The Ld. AR in its submission further states that he was also not provided opportunity examine the persons/witness whose statements have been used against the appellant. I find that such right as held in various decisions, is not an absolute right and depends not only the circumstances of the case but also on the statute concerned. The Hon'ble Supreme Court has held in the case of State of J&K vs BakshiGulamMohd. AIR 1967 (SC) 12, and in the case of Nath International Sales vs. UOI AIR 1992 Del 295 held that the right of hearing does not include a right to cross examine. The right to cross examine must depend upon the circumstances of each case and also on the statute concerned. In the case of T. DevasahayaNadar vs. CIT (1965) 51 ITR 20 (Mad) it was held that "it is not an universal rule that any evidence upon which the department may rely should have been subjected to cross- examination. If the AO refuses to produce an informant for cross examination by the assessee there cannot be any violation of natural justice. "In the case of GTC Industries ltd. Vs ACIT(1998) 60 TTJ(Bomb-Trib) 308, it was held that where statement and report of third parties are only the secondary and subordinate material which were used to buttress the main matter connected with the amount of addition, denial of opportunity to cross examine third did not amount to violation of natural justice." Each case has got to be decided on the facts and circumstances of that case. The relevant factors to be considered are surrounding circumstances, objective facts, evidences adduced, presumption of facts based on common human experience in life and reasonable conclusions. In the present case, as discussed above, there is overwhelming evidences as discussed in details in the order that the transactions on which adverse views have been taken are same transactions.

4.10 Thus, in view of the aforesaid findings read with. the finding recorded by the O, I am of the view that purchases made from (a) Vee Vee Enterprise represent bogus purchases.

4.11 Considering the facts and circumstances of the case and I also find support from decision of Hon'ble Supreme Court in the case of M/S N K Proteins Limited Vs DCIT in 2017 Tax Pub(DT) 1860 (SC): (2017) 250 TAXMAN 0022. The finding of the Hon. SC is as under:-

"Appeal (SC)-SLP Income from undisclosed sources - Addition u/s 68 & 69 Bogus purchases shown on the basis of fictitious invoices. Where assessee filed SLP to appeal against the judgement of the Gujrat High Court in NK Industries limited Vs. DCIT (2016) 292 CTR (Guj.) 354 whereby it was held that addition on basis of undisclosed income could not be restricted to certain percentage when the entire transaction was found as bogus, the Supreme Court dismissed the SLP."

4.12 In the light of discussion above, I do not find any infirmity in the order of A holding that purchases made by the appellant from M/s Vee Vee enterprise Rs. 395308/- is not genuine and bogus “

5. Dissatisfied, the assessee is in appeal before the Tribunal and all the grounds relate thereto.

6. Hearing was fixed for 16.10.2021, 12.10.2021, 13.12.2021, 16.02.2022, 28.07.2022, 20.10.2022, 08.12.2022, 22.02.2023, 13.06.2023 and finally on 29.08.2023. On none of the above date of hearing, the assessee attended, though the Ld. Sr. DR was present on all the dates of hearing. We, therefore proceeded to decide the appeal ex parte after hearing the Ld. SR. DR.

7. The Ld. SR. DR submitted that perusal of the order of Ld. AO/CIT(A) will reveal that reasonable opportunity was provided to the assessee to prove the genuineness of the purchases by producing the proprietor of the concern M/s. Vee Vee Enterprises which the assessee failed to do. Even summon under section 131 issued to the said party by the Ld. AO could not be served at the given address. The addition is, therefore justified.

8. We have heard the Ld. Sr. DR and perused the records. The impugned addition has been made as the assessee could not establish the genuineness of purchases made by him from M/s. Vee Vee Enterprises run and controlled by persons known to be accommodation entry providers. The allegation of the assessee that his case was re-opened without following due process of law is without any substance which is quite evident from the appellate order. The Ld. CIT(A) has dealt with all the arguments advanced by the assessee before him and held with the support of the Hon'ble Supreme Court's decision in M/s. S.N.K. Proteins Ltd. (supra) that the impugned purchases of Rs. 3,95,508/- from M/s. Vee Vee Enterprises were bogus and addition of the entire amount was in order. We endorse the findings of the Ld. CIT(A) and reject the appeal of the assessee.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 31st October, 2023.

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

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

Dated: 31/10/2023

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	