

**IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA BENCH 'C' KOLKATA**

**BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA Nos. 822 to 826/Kol/2023  
Assessment Year: 2012-13 to 2016-17**

M/s. Boscon Leather Products Pvt. Ltd.		DCIT, Kolkata	CIR-11(1),
Haripada Biswas Sarani, Michael Nagar, Sahara, North 24 Pgs. - 700133.	Vs.		
<b>PAN: AABCB 1409 Q</b>			
(Appellant)		(Respondent)	

**Present for:**

Appellant by : Shri Soumitra Choudhury, Advocate  
Respondent by : Shri P.P. Barman, Addl. CIT, Sr. DR

Date of Hearing : 04.10.2023  
Date of Pronouncement : 07.11.2023

**ORDER**

**PER SONJOY SARMA, JM:**

These appeals are preferred by the assessee against the orders of the ld. CIT(A), NFAC dt. 14/06/2023 for Assessment Year 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 respectively. Since the facts and issues are identical and similar in nature, therefore Assessment Year 2012-13 is taken as the lead case and the result of the same shall be followed for subsequent Assessment Years i.e., 2013-14, 2014-15, 2015-16 and 2016-17 respectively.

2. The main grievance of the assessee is against the action of the ld. CIT(A) in sustaining the addition to the tune of 23.82% of alleged disputed purchases by applying GP ratio of 23.82% without rejecting the books of account u/s 145(3) of the Act.

3. Brief facts of the case as noted by the Assessing Officer for Assessment Year 2012-13 is that assessee declared income of

Rs.39,58,140/- in the e-return filed for the impugned year. Subsequently, the case of the assessee was selected for scrutiny after reopening u/s 147 of the Act. On the basis of specific information received from ld. DDIT (Inv.), Kolkata, that the assessee has shown to have made bogus purchases from three different concerns of Shri Sanjiw Kumar Singh, who when searched by the Department gave statement that he and his concerns are providing accommodation entries in lieu of commission. The ld. Assessing Officer noted that the purchase cost from the three concerns of Shri Sanjiw Kumar Singh totaled toRs.1,22,56,644/-. Thereafter, the ld. Assessing Officer reproduced the statement of Shri Sanjiw Kumar Singh and he was of the opinion that the said purchases from three concerns are bogus and added 23.82% profit i.e. Rs.29,19,553/- of total purchases of Rs.1,22,56,644/-. Aggrieved by the above order, the assessee preferred appeal before the ld. CIT(A), who was pleased to confirm the same.

4. Aggrieved, now the assessee is in appeal before this Tribunal.

5. We have heard both the parties and perused the records. It is noted that the ld. Assessing Officer has taken a view that the assessee was engaged in manufacturing of leather products and its income was from the said business. The Assessing Officer based on an information received from the investigation wing that Shri Sanjiw Kumar Singh and his group concerns were indulged in providing accommodation entries through his three concerns and taking note that the assessee had made purchase transactions with these concerns to the tune of Rs.1,22,56,644/- made the addition of GP @ 23.82% of total undisclosed purchase from these concerns i.e.,

Rs.29,19,533/- in the hands of the assessee. When the Assessing Officer confronted the assessee with the information and statement of Shri Sanjiw Kumar Singh recorded during the course of search, the assessee has brought to the notice of the Assessing Officer that it had purchased goods from the parties through banking channels and the purchases were supported by proper bills, delivery challans etc. which according to the assessee could go to show that purchases are genuine. However, according to the Id. A/R, the Assessing Officer has not given any credence to the documents/evidence placed before him by the assessee to substantiate the genuineness of the purchases made by the assessee. While perusing the order of the Id. Assessing Officer we notice that the Id. Assessing Officer in his assessment order has reproduced the statement of Shri Sanjiw Kumar Singh but the Id. Assessing Officer had not given any opportunity to the assessee to cross-examine Shri Sanjiw Kumar Singh. The Id. Assessing Officer has not given any credence to the documents (*supra*) as filed by him nor has found any fault with the same. Under such circumstances, we take note of the decision of the Hon'ble Supreme Court of India in the case of CIT, New Delhi vs M/s. Oden Builders (P) Ltd. [Review Petition (C) Diary No. 22394 of 2019 in Civil Appeal Nos. 9604-9605 of 2018] wherein it has been held by the Apex Court as under:

*"Delay condoned*

*We have perused the review petition and find that the tax effect in this case is above Rs. 1 crore, that is, Rs.6,59,27,298/-. Ordinarily, therefore, we would have recalled our order dated 17th September, 2018, since the order was passed only on the basis that the tax effect in this case is less than Rs. 1 crore.*

*However, on going through the judgments of the CIT, ITAT and the High Court, we find that on merits a disallowance of Rs. 19,39,60,866/- was based solely on third party information, which was not subjected to any*

*further scrutiny. Thus, the CIT (Appeals) allowed the appeal of the assessee stating:*

*Thus, the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of such statements to the appellant, thus denying opportunity of cross examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return. In view of the above discussion in totality, the purchase made by the appellant from M/s Pad Mesh Realtors Pvt. Ltd. is found to be acceptable and the consequent disallowance resulting in addition to income made for RS. 19,39,60,866/-, is directed to be deleted,"*

*The ITAT by its judgment dated 16th May, 2014 relied on the self- same reasoning and dismissed the appeal of the revenue. Likewise, the High Court by the impugned judgment dated 5<sup>th</sup> July, 2017, affirmed the judgments of the CIT and ITAT as concurrent factual findings, which have not been shown to be perverse and, therefore, dismissed the appeal stating that no substantial question of law arises from the impugned order of the ITAT.*

*In these circumstances, the Review Petitions are dismissed."*

6. We also notice that the ld. Assessing Officer while passing the impugned order has not found or pointed out any discrepancy in the books of account filed by the assessee. When the books of accounts are not rejected, the Hon'ble Calcutta High Court in the case of Swadeshi Commercial Co. Ltd. vs CIT [ITA No. 219 of 2001 dated 18.12.2008 (Cal)] held that gross profit cannot be estimated as the Assessing Officer has no evidence to come to the conclusion that the assessee had earned undisclosed profit. The entire addition was made on surmises and conjectures. Accordingly, we are of the considered view that the addition made by the Assessing Officer as sustained by the ld. CIT(A) is bad in law. In view of the above

discussion, we delete the addition made by the Assessing Officer and allow the effective grounds raised by the assessee.

7. Insofar as the appeals in ITA Nos. 823, 824, 825, 826/Kol/2023 for Assessment Years 2013-14, 2014-15, 2015-16 and 2016-17 are concerned, the facts being identical to ITA No. 822/Kol/2023 for Assessment Year 2012-13, our decision rendered therein shall apply *mutatis mutandis* to all these Assessment Years.

8. In the result, all these appeals raised by the assessee are allowed.

Order pronounced in the open court on 07.11.2023

**Sd/-**

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(SONJOY SARMA)**  
**JUDICIAL MEMBER**

Kolkata, Dated: 07.11.2023  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: M/s. Boscon Leather Products (P) Ltd.
2. The Respondent: DCIT, CIR-11(1), Kolkata.
3. The CIT,
4. The CIT (A)
5. The DR

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By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata