

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 6188/Del/2017
(Assessment Year: 2012-13)

ACIT,
Central Circle-19,
New Delhi

Vs. M/s. Sharp Corp Ltd,
Plot No. 9, 1st Floor Sagar
Centre, Gujrawalan Town,
Delhi- 110009

(Appellant)

(Respondent)

PAN: AAACO0036B

Assessee by :

Shri V. K. Bindal, CA
Shri Rinki Sharma, ITP

Revenue by:

Shri H. K. Choudhary, CIT DR

Date of Hearing

23/11/2023

Date of pronouncement

21/02/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.6188/Del/2017 for AY 2012-13, arises out of the order of the Commissioner of Income Tax (Appeals)-27, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 161/55/539/16-17 dated 21.07.2017 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.03.2016 by the Assessing Officer, DCIT, Central Circle-19, New Delhi (hereinafter referred to as 'Id. AO').

2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the disallowance made on account of alleged bogus purchases in the sum of Rs 2,16,83,820/- in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. The assessee is engaged in the import of items like pulses, edible oils,

etc in bulk and sells the same on wholesale basis. A search and seizure action u/s 132 of the Act was carried out on 20.01.2014 in Sharp Group of cases wherein assessee was also one of the entity. Notice u/s 153A of the Act was issued to the assessee and in response to the same, the assessee filed its return of income declaring taxable income of Rs 5,10,82,459/- on 9.9.2015. It is not in dispute that the assessee during the year under consideration had made some purchases of goods from M/s Kamal Kishore Mukesh Kumar to the tune of Rs 2,16,83,820/-. The genuineness of the said purchases was sought to be examined by the Id. AO during the course of search assessment proceedings. The Id. AO also mentioned during the survey proceedings carried under section 133A of the Act, the statement of one Kamal Kishore was recorded where he admitted that his firm was only on paper and was engaged in providing accommodation bills and hence there was no actual sale made by his firm to anyone. The assessee filed a detailed reply vide letter dated 29.03.2016 along with details of purchases made from M/s Kamal Kishore Mukesh Kumar and there after the corresponding sales of such goods. It was submitted that purchases from M/s Kamal Kishore Mukesh Kumar were has duly recorded in the stock registers maintained by the assessee. The said items were also sold during the normal course of business. The quantitative details of purchases made from M/s Kamal Kishore Mukesh Kumar by the assessee company of such goods were filed. The photocopies of the purchase bills and the confirmation of accounts of the said party were also filed. The assessee has also made payments through account payee cheques. Similarly, the quantitative and party-wise details of sales made by the assessee company of such goods as purchased from M/s Kamal Kishore Mukesh Kumar were also filed. The assessee has also made payments through account payee cheques. The assessee also explained the modus operandi adopted by it as under:

a) It is a normal practice of the assessee to send goods to RBRL Agro Commodities Ltd on consignment sale basis. The assessee sent 300.22 MT of Matar to the said broking company. Besides the broking company was holding other stocks of Matar. The broker after making sales on behalf of the company

issued Sale Pattis. These sale patties also included sale of 22.7 MT which was lying earlier with the said broker.

b) The assessee has made sales 2646.956 MT of Channa on NCDEX commodity exchange platform through Sharp Comtrade limited, a Member of NCDEX commodity exchange. The said sales also included stocks of 623.596 MT channa purchased from aforesaid party. A copy of account of Sharp Comtrade limited was filed.

c) The assessee has made sales 416.947 MT of Channa to M/s Narayan Traders. The said sales also included stocks 198.265 MT purchased from aforesaid party. A copy of account of Narayan Traders showing the sales was filed.

d) The assessee has maintained stock registers in Tally.erp9 software as would be borne out from the Tax Audit Report obtained u/s 44AB of the Act. The stock register gives date-wise and quantitative details giving particulars. The assessee has duly entered the goods purchased from the said party. The date wise and item wise stock register for the period from 1.4.2011 to 31.3.2012 was produced.

e) It may also be noted that this is not the case that the assessee has made bogus purchases to reduce the taxable profits. This could have happened only when the assessee did not enter the purchases in the stock register and made the entries only in the purchase account. The quantities of the purchase bills duly appear in the stock registers. Thus when the assessee has made sales of such goods to parties in the normal course of business and duly recorded the same in its books, it is totally incorrect to say that the purchases made from the said party are bogus and not actual.

3.1. The assessee submitted before the Id. AO that the admission made in the statement by Shri Kamal Kishore that he has provided accommodation entries through various concerns is factually incorrect as the said statement was not provided to the assessee for its perusal and rebuttal. Accordingly, the assessee is

completely in the dark about the contents of such statement. It was submitted that in any case, since the assessee has discharged the initial burden of placing on record all primary evidences of having made purchases from M/s Kamal Kishore Mukesh Kumar, to substantiate the said purchases of goods and it is the Revenue which is relying on the statement made by Shri Kamal Kishore, therefore the bare minimum which is required of the department is to provide the copy of his said statement and also grant an opportunity to cross-examine Shri Kamal Kishore. It was submitted that now it is neither the burden of the assessee to prove the genuineness of the transactions between the said supplier or its sub-suppliers nor is it the burden of the assessee to prove that the sub-supplier had the capabilities and the capacity to sell goods to the said supplier from whom the goods have been, eventually, received by the assessee Company.

3.2. It was submitted that the Id. AO had wrongly stated that Narayan Traders and Sharp Comtrade Limited were group companies and were involved in booking bogus purchase expenses. The income tax assessment of Sharp Comtrade Limited for the Asst Year 2012-13 was also with the Id DCIT, Central Circle 19 and it was completed accepting the returned income. The Id DCIT has not pointed out any discrepancy or made any adverse comments while completing the assessment of Sharp Comtrade Limited for the Asst Year 2012-13.

3.3. It was submitted that the Id. AO had again wrongly stated that the company has made bogus purchases for inflating the purchases and reducing the profits. He has at one point given a finding that the company is engaged in booking bogus sales/ purchases within the group company and at the same time, the company is engaged in booking bogus purchase entries for inflating purchases and reducing the profits. It is important to note from the details that the purchases of Rs. 2,16,83,820/- from the said party was sold for an amount of

Rs. 3,59,09,148/-. Thus, these disputed transactions resulted in a gross profit for Rs. 96,55,076/- to the company. The Id AO is completely wrong in concluding that the company entered into bogus purchases to reduce its profits.

3.4. The assessee furnished the Gross Profit and Net Profit of the company for the Assts Year 2012-13 with comparable data for immediately preceding two Asst Years as under:-

<i>Asst Year</i>	<i>Sales (Rs. in Lacs)</i>	<i>Gross Profit (Rs. in Lacs)</i>	<i>GP Ratio</i>	<i>Net Profit (Rs. in Lacs)</i>	<i>NP Ratio</i>
<i>2010-11</i>	<i>15,942.15</i>	<i>216.17</i>	<i>1.36%</i>	<i>65.22</i>	<i>0.41%</i>
<i>2011-12</i>	<i>32,613.79</i>	<i>771.03</i>	<i>2.36%</i>	<i>199.64</i>	<i>0.61%</i>
<i>2012-13</i>	<i>61,285.98</i>	<i>1,640.43</i>	<i>2.68%</i>	<i>502.71</i>	<i>0.82%</i>

From the above, it could be seen that the Gross Profit and Net Profit during the year had actually improved when compared to the earlier years.

3.5. It is also pertinent to note that the sales made by the assessee out of the disputed purchases were accepted by the Id. AO and the profit disclosed by the assessee thereon in the sum of Rs 96,55,076/- had been duly taxed by the Id. AO. Further the books of accounts produced by the assessee together with the book results were not rejected by the Id. AO in terms of section 145(3) of the Act.

3.6. It was further submitted that there is a complete trail of purchases and sales and assessee has been able to correlate each transaction of purchase with corresponding sales together with the relevant entries in the stock registers. The assessee had duly furnished the stock registers, VAT returns showing these transactions which had been accepted by the VAT authorities. The Id. AO had merely made the disallowance of purchases based on the statement of Shri

Kamal Kishore which was not even furnished to the assessee for his rebuttal and cross examination.

3.7. It was further submitted that Shri Kamal Kishore had admitted his involvement in providing accommodation entries on behalf of Shri Devki Nandan Agarwal Prop M/s Lachhu Ram Agarwal & Co. During survey u/s 133A of the Act, it has been admitted by Shri Kamal Kishore that M/s Kamal Kishore Mukesh Kumar is on paper only and not doing any sales/purchases and signing blank cheques only. It was submitted that Shri Kamal Kishore statement should be understood to have links only with Shri Devki Nandan Agarwal and that signing of blank cheques are meant only for transactions of Shri Devki Nandan Agarwal and cannot be extended to other parties. Infact the assessee is no way connected with any such involvement.

3.8. Further it was submitted that the assessee made the corresponding sales (out of disputed purchases) to RBRL Agro Commodities Ltd and Sharp Comtrade Ltd, in whose hands, the purchases made from assessee herein were accepted by the very same Assessing Officer in the search assessments completed u/s 153A read with section 143(3) of the Act. Hence it is a fact that the goods had been indeed sold by the assessee to these two parties. Naturally the assessee without receiving the goods from Kamal Kishore could not have sold the goods to RBRL Agro Commodities Ltd and Sharp Comtrade Ltd. Hence the entire allegations of the Id. AO that Kamal Kishore had not supplied any goods to the assessee falls flat.

4. The Id. DR vehemently argued before us that confirmation from the supplier furnished by the assessee is dated 1.4.2012 and that search happened in the case of the supplier later at which point in time, he had not confirmed the fact of supply of goods to the assessee. Hence it was argued that the confirmation dated 1.4.2012 issued by the supplier to the assessee is of no relevance. With regard to non-furnishing of statement of Shri Kamal Kishore to the assessee, the

Id. DR argued that the Id. AO was in receipt of the statement being recorded from Shri Kamal Kishore from investigation wing only on 1.3.2016 and hence there was no time to give the said statement to the assessee. This should have been logically been given by the Id. CIT(A) to the assessee which was not done by the Id. CIT(A). The Id. DR also pointed out certain defects in the bills issued by Shri Kamal Kishore and also referred to his statement recorded more particularly to Question Nos. 5,6,7,8,9 & 14 thereon.

5. Per Contra, the Id. AR submitted that even the fact of recording of statement from Shri Kamal Kishore was received from the investigation wing by the Id. AO only on 1.3.2016, nothing prevented the Id. AO to have furnished the said statement to the assessee along with the show cause notice issued on 23.3.2016 granting time to the assessee to respond till 29.3.2016. Either way for the revenue's default in holding the statement of Shri Kamal Kishore (starting from investigation wing), why should the assessee suffer. Further nowhere in the show cause notice issued by the Id. AO , it had even been alleged that Shri Kamal Kishore had given statement that he had not supplied any goods to the assessee herein. The show cause notice does not even whisper about any mentioning of cash trail between Shri Kamal Kishore and assessee. In this scenario, merely placing reliance on a statement taken behind the back of the assessee and which was not even put across to the assessee, then no addition could be made based on such statement. The statement of Shri Kamal Kishore was ultimately placed on record by the Id. DR at the time of hearing before this Tribunal with copy handed over to Id. AR. The Id. AR also defended the statement of Shri Kamal Kishore stating that nowhere the supplier had even mentioned the name of the assessee herein to have been indulged in any malpractices. Hence he argued that the entire statement of Shri Kamal Kishore is per se not detrimental to the assessee at all and all the allegations leveled thereon pertain to Shri Kamal Kishore qua other parties which does not include the assessee herein. Even in Question No.8, it was replied that Shri Devki Nandan had invested in the concern. While this is so, why no enquiries were

carried out with Shri Devki Nandan Agarwal by the revenue. This would have proved the doubt of the revenue beyond doubt.

6. We find that the Id. CIT(A) had addressed the entire allegations of the Id. AO by observing as under:-

1. *In these grounds of appeal, the appellant has contested the finding of the AO to treat the purchase of pulses of Rs. 2,16,83,820/- made by the assessee during the impugned assessment year from M/s Kamal Kishore Mukesh Kumar as bogus on the basis of information received from the Income Tax Investigation Wing, New Delhi.*

2. *From the assessment order, it is seen that the AO has referred to the statement of Sh Kamal Kishore recorded on oath on 20-03-2015 to hold that the purchase of pulses from M/s Kamal Kishore Mukesh Kumar is bogus for the reason that Sh Kamal Kishore has himself admitted in his statement that no actual sale purchase took place in the said firm and he used to issue blank cheque book duly signed to one Mr. Mahesh Mittal and Mr. Devki Nandan Aggarwal and received Rs. 6,000/- per month for doing entry operation work.*

3. *The AO has further recorded that the assessee has sold the said material only to group concerns i.e. RBRL Agro Commodities Ltd, Narayan Traders and Sharp Comtrade Ltd. That it appears that the assessee was mainly involved in booking bogus sale purchase within the group company and this proves that not only the assessee company but also its group concerns were equally involved in booking bogus purchases expenses.*

4. *The AO has lastly concluded that based on the statement of Sh Kamal Kishore in respect of the bogus purchase entries, one company i.e. M/s Shakti Bhog Foods Ltd has already accepted the bogus sales made from the same entity M/s Kamal Kishore Mukesh Kumar and made substantial disclosure on the issue. Thus in view of the above and the categorical assertion made by Sh. Kamal Kishore on his statement on oath, the purchases of Rs. 216,83,820/- made by the assessee was treated as bogus purchase entries for inflating the purchases and reducing the profits.*

5. *The above facts and conclusion drawn by the AO were confronted by the show-cause notice dated 23-03-2016 to the assessee who vide reply dated 29-03-2016 furnished detailed explanation to the said SCN which has been produced in para no. 3 of the assessment order. The same is not being repeated for the sake of brevity. The AO has on the perusal of this reply disbelieved the version of the assessee and added the so called bogus purchase entries.*

6. I have considered the entire finding of the AO with respect to purchases made by the assessee from M/s Kamal Kishore Mukesh Kumar and the submissions made vide letter dated 21-10-2016 and 23-05-2017 along with supporting documents like detailed chart giving quantities and values of disputed purchases and the sale made thereafter of the disputed purchases, confirmation and the purchase bills of M/s Kamal Kishore Mukesh Kumar and the party accounts showing sales thereof and the comparative chart of Gross Profit & Net Profit ratios of the assessee company.

7. The assessee company is engaged in the import of items like pulses, edible oils, etc in bulk for the past many years and makes sales on wholesale basis. During the assessment year 2012-13, the assessee company has made total purchases of Rs. 678.90 Crores and sales of Rs. 612.85 Crores. It has also been noted from the comparative chart that the Gross Profit & Net Profit ratios for the assessment year 2012-13 have improved as compared to earlier years.

8. It is seen from the assessment order that the AO has returned a finding which is based on a preliminary investigation report of the Income Tax Investigation Wing and has held that the purchases made by the assessee company from M/s Kamal Kishore Mukesh Kumar Rs. 2,16,83,820/- were fictitious in nature and that these purchases were made to reduce profits during the year.

9. On a detailed examination of the submissions and documentation filed by the assessee company, it has been noted that the assessee has made purchases from M/s Kamal Kishore Mukesh Kumar and has duly recorded the same in the stock registers. The said items were also sold during the normal course of business as shown in the purchase-sales chart. Thus it cannot be said by any means that the purchase transactions were not real and are bogus. The quantitative details of purchases made from M/s Kamal Kishore Mukesh Kumar by the assessee company of such goods along with the photocopies of the purchase bills and the confirmation of accounts of the said party have been placed on record. The assessee has also made payments through account payee cheques.

10. That it has been pointed by the AR that the block assessments of M/s RBRL Agro Commodities Ltd and Sharp Comtrade limited were made by the same AO under section 153A read with 143(3) of the Income Tax Act and no such disallowance of bogus purchases were made during the block assessments. It has also been pointed out by the assessee that Sharp Comtrade Limited and M/s Narayan Traders are not related concerns of the assessee in any manner. The company had made sales to the said two parties in the normal course of its business. Necessary details of sales made to the said parties have also been placed on record. Thus this is not the case that the assessee has made bogus purchases to reduce the taxable profits because there are corresponding sales. The AO has failed

to bring any material on record which proves that Shri Kamal Kishore had issued bogus purchase bills to Sharp Corp Limited.

11. The assessee has maintained stock registers in Tally.erp9 giving date-wise and party-wise quantitative details and has also obtained Tax Audit Report under section 44AB of the Income Tax Act. Thus, from the above discussion and the evidences / documents in the shape of confirmations, stock registers, quantitative details etc the purchases made from the said party could not be treated as bogus and not real in the nature of accommodation entries.

12. That no addition can be made in the hands of the assessee merely on the basis of observations made by a third party. While making the assessment, it is the satisfaction of the AO which is of prime importance. It cannot be substituted by the satisfaction someone else. The assessee company has discharged the primary onus cast on it by showing the purchases in the books of accounts, payment by way of account payee cheques and producing the vouchers of sale of goods. The AO did not make requisite investigations against the said seller by the issue of notice under section 133(6) of the Income Tax Act and has proceeded to disallow the purchases as bogus relying on the information received from the investigation wing. It has been held by the Hon'ble ITAT, Delhi in case of Unique Metal Industries (ITA no. 1372/ DEL/2015 dated 28.10.2015 as under:

"in para no. 25 thereof the ITAT has given a finding that the revenue has doubted the purchases of the assessee on the basis that these persons have made statement that they have issued accommodation bills and have not made actual sales to the assessee. The ITAT has held that in the present case the assessee has made purchases and there are corresponding sales which have not being doubted. That as the sales have not been doubted then obviously purchases would be there..... In the present case there is complete trail of purchases and sales so far as the assessee is concerned who has been able to correlate each transaction of purchase with sales which is fully documented.... That in the facts and circumstances of the case not much reliance can be placed on the statement of the parties from whom purchases have been made but denied by them in their statement, which cannot be taken at face value.

13. The AO has relied on the statement of Shri Kamal Kishore even when neither a copy of the statement of Shri Kamal Kishore was provided nor any opportunity to cross examine was given to the assessee to bring out

the truth. Here even the AO has completely disregarded all the evidences provided by the assessee with regard to the purchases and sales. That without such opportunity of cross-examination it is legally untenable to use such statement to come to an adverse conclusion against the assessee.

i) The Apex Court has held in the case of Kishinchand Chellaram v. CIT reported in (1980) 125 ITR 713 (SC) as under:-

Though the proceedings under the Income-tax Act are not governed by the strict rules of evidence, the department is bound to afford an opportunity to controvert and cross examine the evidence on which the department places its reliance. Opportunity of cross examination must be given. The consequence of breach of natural justice is that either the addition is void or matter may have to be to be remanded to lower authorities.

ii) The Delhi High Court has held in the case of CIT v. J. M. D. Communications P. LTD reported in (2010) 320 ITR 17 (ST) (SC) as under:-

Person who has issued the bills has given the statement that he was carrying on the business of issuing bogus accommodation bills on commission basis with the assessee, and this was not put to the assessee for rebuttal or cross-examination, High Court held no substantial question of law. On SLP by revenue the Court held that if the AO wants to use some statement made before him, then on request by the assessee, is bound to put the deponent for cross examination.

14. It has also been noted that no such evidence or incriminating documents whatsoever was found during the course of search carried on 20.01.2014 in the case of the assessee which could even remotely suggested that the purchase made from the said party is bogus in nature. Also no evidence was found to prove that the cash flowed back from the aforesaid party against the disputed purchases to the assessee. Rather the said party has given confirmation of accounts to the assessee. The AO has also stated in the order that Shri Kamal Kishore used to give blank cheque books duly signed to Mahesh Mittal and Shri Devki Nandan Aggarwal. The name of the assessee company has no where been mentioned.

*15. Therefore, the total disallowance of purchases made M/s Kamal Kishore Mukesh Kumar for Rs 2,16,83,820/- is directed to be deleted and ground of appeal nos. 1,2,3 &4 are consequently **allowed**.*

7. We find that the aforesaid factual findings and legal findings were not controverted by the revenue before us by cogent evidences. We find that the assessee in the instant case had duly discharged its burden by furnishing all the necessary documents to prove the veracity of the purchases from Kamal Kishore Mukesh Kumar to the tune of Rs 2,16,83,820/-. The goods purchased from the said supplier had been duly reflected in the stock registers maintained by the assessee and the same were sold by the assessee to RBRL Agro Commodities Ltd and Sharp Comtrade Ltd by making due reduction in the stock register to the extent of sales. Hence the purchases and corresponding sales were duly matched by the assessee in the instant case. Moreover, the sales made by the assessee is not doubted by the revenue and naturally the purchase made by the assessee cannot be doubted. The purchase made by the assessee from the said supplier had been duly reflected in the books of accounts and payments made for the same through account payee cheques out of disclosed sources of income. One more excruciating fact to be considered in the instant case is the ledger account of Kamal Kishore Mukesh Kumar as appearing in the books of the assessee company for the period 1.4.2011 to 31.3.2012, wherein it could be seen that total purchases made during the year by the assessee from the said supplier was Rs 2,62,54,071.60 , out of this, the Id. AO is disputing the purchase made from this very same supplier only for the sum of Rs 2,16,83,820/-. How can the said supplier be genuine for the remaining supplies and be ingenuine only for the disputed supplies of Rs 2,16,83,820/-. Hence the entire case of the revenue falls flat.

8. In view of the aforesaid observations, we do not find any infirmity in the order of the Id. CIT(A) granting relief to the assessee in the facts and circumstances of the instant case. Accordingly, the grounds raised by the revenue are dismissed.

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

Order pronounced in the open court on 21/02/2024.

-Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:21/02/2024
A K Keot

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

ASSISTANT REGISTRAR
ITAT, New Delhi