

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Anubhav Sharma, Judicial Member

ITA No. 3003/Del/2015 : Asstt. Year : 2010-11

M/s Flexsin Technologies Pvt. Ltd., G-63, Sector-63, Noida-201301	Vs	Income Tax Officer, Ward-2(1), Noida
(APPELLANT)		(RESPONDENT)
PAN No. AABCF2779B		

Assessee by : Sh. C. S. Anand, CA

Revenue by : Sh. Shyam M. Singh, Sr. DR

Date of Hearing: 05.02.2024

Date of Pronouncement: 04.03.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-I, Noida dated 05.02.2015.

2. Following grounds have been raised by the assessee:

"1. On the facts and in the circumstances of the case and in law the Commissioner of Income-tax (Appeals) erred in passing the order without appreciating the submissions of the assessee.

2. The appellant prays that the addition of Rs.42,90,805/- made by the Assessing Officer on account of bogus purchases be deleted."

3. The assessee is engaged in the business of export of I.T. & I.T. enabled services. The assessee filed return of income on 14.10.2010 declaring income of Rs.7,91,720/-. The return was processed u/s. 143(1) and thereafter the case was selected for scrutiny and statutory notice u/s. 143(2) dated 27.09.2011 was

issued and duly served upon the assessee. During the assessment proceeding, the Assessing Officer found that the assessee had made huge amount of purchase totaling Rs.42,90,585/- from two parties at the fag end of the financial year as per details given below:

Name of the party	Amount of purchase/Sundry creditors
1. M/s. Balaji enterprise	Rs. 21,81,805/-
2. M/s. Ganoati Trading Company	<u>Rs. 21,08,780/-</u>
TOTAL	<u>Rs.42,90,585/-</u>

4. During the assessment proceedings, the assessee was enquired to establish the genuineness and source of above purchases. After enquiries and examinations, the AO held above purchases amounting Rs.42,90,805/- as bogus und accordingly the same was disallowed and added to the income of the assessee.

5. Aggrieved, the assessee filed appeal before the Id. CIT(A) who affirmed the order of the Assessing Officer.

6. The operative portion of the order of the Id. CIT(A) is as under:

"In this regard, to verify the genuineness of the purchases, notices u/s. 133(6) were sent to the above two parties on the address provided by the assessee. However, no reply was received from above two suppliers. Thereafter, summons u/s. 131 dated 4/2/2013 were issued to the parties and Inspector was deputed for enquiry regarding existence of the supplier firms. After detailed spot enquiries the Inspector has reported that the two supplier firms are nonexistent on the given

address. On perusal of the assessment order I find that the AO has brought on record sufficient material to show that these two supplier firms are bogus and none-existent at the given addresses. This fact was duly confronted to the assessee requiring him to explain and prove the identity and genuineness of the above purchase transactions. Vide order sheet entry dated 07/3/2013 the assessee was specifically asked to either produce both the parties or give correct postal address failing which the impugned purchase would be treated as bogus. However, there was no response and neither the suppliers were produced nor current postal addresses were furnished. Besides, the assessee was also asked to produce complete books of account along with supporting bills and vouchers which were never produced before the A.O. However, assessee merely produced copy of ledger account and thus the assessee was once again asked to produce complete books of account which was never produced before the A.O. for the reasons known to the assessee only.

On examination of bills the AO also found that around 45% of combined sales were achieved in last two months i.e. February and March, 2010 and this was not possible without making purchases from outside parties so as to meet their export commitments. Moreover the, assessee has also failed to produce documentary evidence whatsoever so as to prove that during the financial year under consideration it was engaged in I.T. and IT enabled services and that assessee was engaged in software export.

However, on perusal of purchase bills and ledger accounts of above two parties the AO has pointed out certain discrepancies as under:-

- 1. The bills of both firms are computer generated and prepared on same computer.*
- 2. Bills Font & Design are the same of both the firms.*
- 3. No telephone Numbers are mentioned in both the bills.*
- 4. Surprisingly it was noticed that the TIN Number of both the parties are same mentioned i.e. 09165706399. which clearly indicates that all these bills are bogus.*
- 5. The assessee deliberately not produced both the parties, which is evident from the reply submitted on 21.03.2013 that on one hand he is giving confirmed copy of account of both the parties but on the hand not producing parties and even not giving the current postal address.*
- 6. The assessee has shown payment of Rs.9,95,537/- through cheque to M/s Ganpati Trading Co., and shown payment of Rs. 16,85,013/- to M/s Baiaji Enterprises though NEFT on the last day of financial year i.e. 31.03.2010 and balance amount is shown as sundry creditors.*

Taking all the above into consideration and in the light of AO's finding I am convinced that AO has made enquiries to bring on record sufficient material to challenges the genuineness of the purchases from both the parties whereas on being confronted the assessee has not been able to rebut/controvert above findings. Besides, the assessee has also failed to produce complete books of

accounts along with bills and vouchers. Further the AO has also pointed out certain discrepancies with respect to purchase and ledger accounts of above two suppliers which have not been contested by the assessee in the assessment proceeding. Moreover, the so called suppliers were also not produced before the AO.

In the light of above facts and discussion thereon I am convinced that the trading results shown by the assessee cannot be relied upon' in the light of above findings and that it is a fit case for invoking the provisions of section 145(3) so as to reject the books of accounts. Even during the appellate proceeding the appellant has not come out with any new facts or evidence so as to establish the genuineness of above transactions. The appellant has also failed to explain during the appellate proceeding the reasons for not producing the complete books along with supporting bills/vouchers. I have considered the appellant's submission furnished before me and find the same devoid of merit and the same are thus being rejected. Notwithstanding above I am fully convinced without any doubt that despite having been given reasonable time and sufficient opportunity the assessee has failed to discharge his onus in proving the nature, source and genuineness of impugned purchases from above two suppliers and therefore AO was fully justified in holding the same as bogus purchases made to suppress the profit. Accordingly the addition of Rs.42,90,805/- made by the AO is upheld."

7. Aggrieved, the assessee filed appeal before the Tribunal.

8. Heard the arguments of both the parties and perused the material available on record.

9. The issues flagged by the Id. CIT(A) are examined with the backdrop of the issue.

- *The bills of both firms are computer generated and prepared on same computer.*

Nowadays, all the bills are generated from the computers and there was no evidence on record to prove that the bills are prepared on the same computer.

- *Bills Font & Design are the same of both the firms.*

No adverse inference can be drawn on such issue.

- *No telephone Numbers are mentioned in both the bills.*

No adverse inference can be drawn on such issue.

- *Surprisingly it was noticed that the TIN Number of both the parties are same mentioned i.e. 09165706399. which clearly indicates that all these bills are bogus.*

The TIN number referred by the Id. CIT(A) belongs to the assessee and hence it is bound to be the same on all the bills. The observation of the Id. CIT(A) is incorrect.

- *The assessee has shown payment of Rs.9,95,537/- through cheque to M/s Ganpati Trading Co., and shown payment of Rs. 16,85,013/- to M/s Balaji Enterprises though NEFT on the last day of financial year i.e.*

31.03.2010 and balance amount is shown as sundry creditors.

On verification of the record, it was found that while payment of Rs.9,95,537/- through cheque to M/s Ganpati Trading Co., and Rs. 16,85,013/- to M/s Balaji Enterprises though NEFT on the last day of financial year i.e. 31.03.2010 has been made the remaining amounts have been paid in the subsequent year. Hence, no adverse inference can be drawn.

- *The assessee deliberately not produced both the parties, which is evident from the reply submitted on 21.03.2013 that on one hand he is giving confirmed copy of account of both the parties but on the hand not producing parties and even not giving the current postal address.*

The transactions took place in February and March, 2021. The AO asked the assessee on 21.03.2013 to produce books of accounts on 22.03.2013 which is just after a day. The AO at page no. 5 of the Assessment Order admitted that the assessee company has produced copies of bills of M/s Ganpati Trading Company and by M/s Balaji Enterprises along with confirmed copies of the ledger accounts. Thus, the confirmations were available before the AO. Further, we have gone through the report of the Inspector with regard to M/s Ganpati Trading Company wherein he met the wife who replied that "my husband is running the business of computer but I don't know in detail." She has also provided mobile number of Sh. Ram Prakash to the Inspector. The total export sales was

Rs.1,84,18,698/- and the total purchases of Rs.42,90,805/- from these two parties only. The AO has treated the entire purchases as bogus while accepting the export sales of Rs.1,84,18,698/- There could not have been any export without purchase of material. The material purchased as per the invoices is as under:

Name of the firm	Description of goods	Invoice No.	Date	QTY	Amount
M/s Balaji Enterprises	Content Management System (CMS)	345	03.03.2010	4	4,08,735
-do-	Product Comparison System	347	05.03.2010	6	5,27,861
-do-	E-Commerce Software	352	10.03.2010	5	4,23,528
-do-	Content Management System (CMS)	356	14.03.2010	3	
	Invoice System	356	14.03.2010	5	6,37,581
-do-	E-Commerce Software	357	14.03.2010	2	1,84,098
M/s Ganpati Trading Co.	ERP-Attendance & Payroll	154	04.02.2010	2	5,49,140
-do-	On line Bidding Application	155	05.02.2010	1	1,72,634
-do-	Mobile Application for location search	156	05.02.2010	6	6,28,908
-do-	ERP-Attendance & Payroll	192	24.02.2010	1	3,19,986
-do-	ERP-Attendance & Payroll	201	28.02.2010	1	
	Mobile application for location service			1	4,38,120
	Total purchases				42,90,591

10. The Assessing Officer has accepted the sale receipts but disallowed the entire purchases. There could not have been any sales without purchases. The books of accounts have not been rejected by the AO, as required u/s 145(3) of the Income Tax Act, 1961, without rejecting the books of accounts and without estimating any gross profit, while accepting the entire sales at the same time disallowing the entire purchases is beyond any rhyme & reasons sans logic. Hence, the addition made is liable to be deleted.

11. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 04/03/2024.

Sd/-

(Anubhav Sharma)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 04/03/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR