

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

**BEFORE SHRI G. S. PANNU, VICE-PRESIDENT  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1123/Del/2016  
(Assessment Year : 2011-12)

ACIT  
Central Circle-17,  
New Delhi

Vs. Shri Praveen Kumar Garg, HUF,  
WZ-14D, Manohar Park, Rohtak  
Road, Delhi.

**PAN No. AALPK 7313 B**

**(APPELLANT)**

**(RESPONDENT)**

Assessee by  
Revenue by

Shri Yashu Goel, C.A.  
Shri P.N. Barnwal, CIT-D.R.

Date of hearing:  
Date of Pronouncement:

19.03.2024  
05.06.2024

**ORDER**

**PER ANUBHAV SHARMA, JUDICIAL MEMBER :**

This appeal is preferred by the Revenue against the order dated 30.12.2015 of the Commissioner of Income Tax (Appeals)-27, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.26/2014-15 arising out of the appeal before it against the order passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), by the ACIT, Central Circle-8, New Delhi (hereinafter referred to as the Ld. AO).

2. The assessee filed return of income declaring income at Rs.13,84,565/- which was taken up for scrutiny. During the year under consideration, the assessee was having the business of running of petrol pump at Mundka and the business of trading of oil business with the name and style M/s GSV Products. Consequent to search conducted at the business premises of M/s PICO Deepali Overlays Consortium and M/s G.L. Litmus Events Pvt. Ltd., a survey operation was carried out at the business premises of M/s Garg Roadlines on 27.04.2011. The AO had questioned the purchase of diesel amounting to Rs.76,92,840/- from M/s Garg Roadlines and concluded that the same were out of books. Further, certain expenses were disallowed amounting to Rs.1,16,153/-. The AO had also questioned the payment of Rs.8,91,000/- for conversion of land from agricultural to commercial purpose and, considering the same to be paid as a fine, was disallowed u/s 37 of the Act. A sum of Rs.13,20,89,060/- was added on the basis that the Form DVAT-31 for sales tax paid to Delhi Government was found to show a total sales from 01.04.2010 to 30.06.2010 at Rs.1,88,80,696/- with proportionate sales for whole year calculated at Rs.7,55,22,784/-. The AO, on the basis of the audited copy and P&L Account of the assessee, considered the corresponding purchases to be lesser and added back the same as bogus purchases to cover up the expenses for the sale receipts and, subsequently, to reduce the profit margin. The AO concluded that the purchase comes to Rs.20,76,11,844/- being Rs.519,02,961/- x 4. Therefore, this deemed purchase of Rs.20,76,11,844/- was separated from the proportionate sale of Rs.7,55,22,784/- and the balance Rs.13,20,89,060/- was added.

3. In appeal, the CIT(A) had deleted the addition of Rs.82,79,898/- on the basis of the following discussion in para 10:-

*“10. On careful perusal of the facts and circumstances of the case and the findings recorded by the Ld AO, it is seen that the Ld AO has noted that no gate-passes, accreditation certificates were found in support of supplies made also the manager of petrol pump M/s Garg Roadlines in his statement recorded categorically denied to have ever heard the name of M/s Deepali designs and exhibits P Ltd. as per the Ld AO it was found that majority of the sales of the vender were in cash and only on few occasions the sales have been made through cheques and also from the books no proof of sale/ transportation documents could be found. In the other case of M/s G L litmus events private limited also no invoices corresponding to any transaction related to supply were found.*

*10.1 The present case under appeal is of M/s Parveen Kumar Garg HUF which has conducted business under the name and style of M/s Garg Roadlines as proprietor of the same only till 30.06.2010, after that the constitution of M/s Garg Roadlines changed and it was converted into a Partnership firm consisting of two partners and M/s Parveen kumar garg HUF had no concern with that business any longer. Moreover the newly constituted partnership firm had been assessed separately by the jurisdictional AO [the then ITO Ward 25(3), New Delhi] u/s 143(3) of the IT Act, the transaction in question, as per the findings of the Ld AO pertains to CWG 2010 (3rd October 2010 to 14th October 2010) i.e. to a period after business activities were discontinued by the assessee. In my considered view the transaction pertains to a time period after the proprietorship firm of the assessee was converted into a partnership, and the partnership firm is assessed separately to income tax and the assessee has concern with these transactions as such the addition of Rs. 82,79,898/- deserves to be deleted It is ordered accordingly.”*

3.1 Similarly, the addition of Rs.13,20,89,060/- was deleted by following relevant findings in para 20:-

*“20. I have considered the findings of the Ld AO and the submissions of the Ld AR and have seen that figures quoted by the AO are not available in the records of the assessee and also the he has erred in estimating the turnover of the assessee for the entire year whereas the business was conducted for three months only. I am also inclined to agree with the contention of the Ld AR that the figures taken by the Ld AO are not matching with the records of the assessee. Moreover the modus operandi adopted by the Ld AO in making the estimation of the alleged bogus purchases made by the assessee to cover up the expenses cannot be upheld without pointing out any defect in the audited books of accounts and also with no qualification from the auditors. The Ld AO could not have made additions to the turnover of the assessee without invoking section 145(3) of the Act and rejecting the books of accounts. In my considered view the additions made on this ground cannot be upheld and this ground of the assessee is allowed and the addition made of Rs. 13,20,89,060/- is deleted. It is ordered accordingly.”*

4. Now, the Revenue is in appeal raising the following grounds of appeal:-

1. *“The Ld. CIT(A) has erred in deleting the addition of Rs.82,79,898/- or account of sales by holding that M/s Garg Roadlines was converted into partnership firm without appreciating the facts that Parveen Kumar himself stated on oath during survey that M/s Garg Roadlines is the proprietor concern of Mr. Parveen Kumar Garg and had failed to produce any evidence regarding its conversion into partnership firm either before the AO or before CIT(A).*
2. *The Ld. CIT(A) has erred in ignoring the fact that all these sales to GL. Litmus Events Pvt. Ltd. & Deepali Design & Exhibits Pvt. Ltd. were made in cash and outside the regular books of account and accordingly the same was rightly held as unaccounted sales of the assessee.*
3. *The Ld. CIT(A) has erred in deleting the addition of Rs. 13,20,89,060/as bogus purchases made by the assessee.*
4. *That the Ld. CIT(A) has erred in not allowing the AO to examine the facts presented at the appellate stage.*

5. (a) *The order of the CIT (A) is erroneous and not tenable in law and on facts*

*(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

5. Heard and perused the record.

6. At the time of hearing, the Id. DR has although supported the findings of the AO. However, Id. AR was able to place on record at pages 25-27 of the paper book the assessment order dated 30.12.2018 for AY 2011-12 in the hands of M/s Garg Roadlines, the partnership firm, whose case was reopened and the income was reassessed after making addition of the disputed sales made to Pico Deepali Overlays Consortium and M/s G.L. Litmus Events Pvt. Ltd. In this context, we observe that even the AO of the present assessee in the assessment order had mentioned that the jurisdictional AO of Garg Roadlines firm is being informed separately. Thus once additions in the hands of the firm stand made the findings of the CIT(A), require no interference.

7. As regards the addition made of Rs.13,20,89,060, we are of the considered view that for non-existing sales and non-existing purchases, addition was made, on presumptive basis. There is force in the contention of the Id. AR that without rejecting the books of account, there is no reason to interpolate into the sales and purchases beyond the accounts. Even otherwise, it is established that there was change in the nature of composition of the business form from proprietorship to a

partnership firm. Thus, there is no justification to make any proportionate adjustment for whole year when the business of proprietorship stood transferred to the partnership firm and the partnership firm's reassessment is separately concluded.

8. The grounds have no substance and appeal of revenue is dismissed.

Order pronounced in the open court on 05.06.2024

Sd/-

**(G. S. PANNU)**  
**VICE PRESIDENT**

Date:- 05.06.2024

Sd/-

**(ANUBHAV SHARMA)**  
**JUDICIAL PRESIDENT**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI