

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

**BEFORE MR. S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND MS. MADHUMITA ROY, JUDICIAL MEMBER**

**I.T.A. No. 1932/Del/2023  
(Assessment Year : 2015-16)**

JCIT (OSD),  
Central Circle -18  
New Delhi

Vs. Nirvana Infracon Pvt. Ltd.  
87, Pocket-1, Jasola,  
New Delhi-110 025

**PAN: AADCN 8810 B**

**(Appellant) .. (Respondent)**

**Appellant by : Shri Pradeep Dinodia, C.A.  
Shri R. K. Kapoor, C.A.  
Respondent by : Shri Anshul, Sr. D.R.**

**Date of Hearing 30.05.2024  
Date of Pronouncement 27.06.2024**

**ORDER**

**PER MS. MADHUMITA ROY – JUDICIAL MEMBER :**

The instant appeal filed by the Revenue is directed against the order dated 25.04.2023 passed by the Commissioner of Income Tax (Appeals) – 27, Delhi under section 250 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') arising out of the order dated 30.12.2017 by the ACIT, Circle - 18(2), Delhi under Section 144 of the Act for Assessment Year 2015-16.

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2. The brief facts leading to this case is that, the assessee-company filed its return of income on 30.09.2015 declaring income at Rs.67,98,210/-. The same was selected for limited scrutiny and notice whereof under Section 143(2) of the Act dated 12.04.2016 followed by notice under Section 142(1) of the Act dated 14.09.2016 and 17.08.2017 along with detailed questionnaire were sent to the assessee. The case was specifically converted to complete scrutiny upon approval granted by the Learned PCIT-06, New Delhi dated 23.10.2017 which fact was brought to the notice to the assessee by and under letter dated 26.10.2017.

3. The assessee is having its business of infrastructure development with specialization in road and highway construction and also engaged in the business of site development and earth work in filling and cutting and also leasing of equipments to other parties.

4. During the course of assessment proceedings, upon perusal of the Balance Sheet of the company, it was found that the assessee claimed Rs.12,78,51,185/- for purchase of construction material under the head of other expenses whereupon the assessee was asked to provide the ledger details of construction materials in response whereof the assessee filed the following details:

**M/s. Nirvana Infracon Pvt. Ltd. A.Y. 2015-16**  
**Construction Materials**

Sr. No.	Description	Bill Amount
1.	Construction Material – Soil	5,11,16,070.00

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2.	Construction Material	8,81,669.00
3.	Construction Materials – GSB/WMM/Dust	3,63,98,681.00
4.	Construction Materials Fly-Ash	3,43,21,747.00
5.	Construction Materials – M.P. Site	51,33,018.00
	Total Amount	12,78,51,185.00

5. Notice under Section 133(6) dated 10.10.2017 was also issued to the parties to verify the purchases claimed by the assessee; the same was served by the inspector by hand to the following parties, the details whereof is as follows:

Sl. No.	Name of the Party	Remarks
1.	KN Infracon Pvt. Ltd.	Not found at the given address
2.	NSG Enterprises	Not found at the given address
3.	Vikas Kumar Taneja	Not found at the given address
4.	Anil Kumar	Address not found
5.	M/s. Four Star horization construction	Found at the given address

6. The assessee, thereafter, by and under notice under Section 142(1) of the Act dated 28.11.2017 issued by the Assessing Officer directed to produce the following vouchers on test check as reflecting from the ledger account submitted by the assessee.

Name of Party	Vouchers No.
M/s. Four Star Horization Construction	866 & 799
Ram Vilas Yadav	422,479 & 759
Prem Prakash	1474, 598 & 471
M/s. Wahi Transport	164,287
M/s. N.S.G. Enterprises	1237,1475

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M/s. N.S.G. Enterprises	85,190,131
M/s. Krishna Builder & Supplier	165,285,382

7. Thereafter, the following parties issued a notice under Section 131 of the Act in order to verify the genuineness of the bills so filed by the assessee by and under the reply dated 08.11.2017 :

1. M/s. NSG Enterprises
2. M/s. Wahi Transport
3. M/s. KnbInfracon
4. M/s. Krishna Builders & suppliers
5. M/s. Four Star Horiznation Construction
6. Shri Ram Vilas Yadav
7. Shri Prem Prakash Sharma
8. M/s. SRL Trading Co.
9. Shri Vikaskumar Taneja
- 10.M/s. Surender Kumar & Sons
- 11.Shri Jasgit Singh Libra

8. Out of this notices sent to two parties namely M/s. NSG Enterprises and Prem Prakash Sharma was returned who was specifically directed to be produced before the Learned AO. Apart from that, out of the nine parties to whom the notice were served, six parties appeared and statement made by them was duly recorded on various dates. The three other parties did not appear in response to the notice under Section 131 of the Act, as claimed by Revenue. Apart from that one Mr. Anil Kumar Rana proprietor of M/s. Krishna Builders & Transport and the other remaining five parites stated that the services they have rendered to the assessee company was only transport of construction material and there was no sale or purchase transaction made with the assessee company. On

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07.12.2017, further notice under Section 142(1) of the Act was served upon the assessee directing the assessee to furnish the details of top 10 parties from whom purchase were made during the year under consideration. According to the Revenue, out of the 10 parties, admitted that they had not made any sales to the assessee company, show cause therefore, was issued. The content whereof is as follows:

*“In connection with the ongoing assessment proceedings for the A.Y. 2015-16, you were required to produce the vouchers/bills of the below tabulated parties to substantiate your claims of expenses towards purchase of sand/material soil/fly ash vide notice /s 142(1) dated 26.10.2017 and you submitted the bills/vouchers of the these parties vide your submission dated of 8.11.2017. Further, summons u/s 131 of the Income Tax Act, were issued to these parties to cross examine and verify the claims of purchase made by the assessee. The response of all the parties as per the statement recorded u/s 131 of the Act is as summarized below:-*

<i>Sl. No.</i>	<i>Name of the party</i>	<i>Claim of the assessee</i>	<i>Statement of the party u/s 131</i>
<i>01.</i>	<i>M/s KN Infracon Pvt. Ltd.</i>	<i>Purchases of 62,10,762/-</i>	<i>Sh. Shailender Tyagi, Director of M/s K. NInfracon Pvt. Ltd. in his statement stated that they have provided only transportation services to you and not made any sales. This is contrary to your claim that purchases were made from this party. In reply to the question No.10when confronted with the bills submitted by you, Mr. Tyagi stated that these bills were electronically altered as on the bills issued by M/s K N Infracon Pvt.</i>

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			<i>Ltd. the subject reads "Transportation of fly ash" whereas on the bill submitted by you subject has been altered to as "Supply of fly ash at wazirabad project".</i>
02.	<i>Sh. Ram Vilas Yadav</i>	<i>Purchases Rs.78,62,164/-</i>	<i>Mr. Ram Vilas Yadav in his statement stated he that is involved in the transportation of Building material and soil and only transportation Services were provided to you and NO sales were made. This is contrary to your claim that purchases were made from this party. In reply to the question no.9 of the statement when confronted with the bills submitted by you and in response he said that bill bearing serial No. 40 voucher No.479 and Bill bearing serial No.38 and voucher No.479 were issued as blank from his bill book and he has not signed these bills.</i>
03.	<i>M/s Wahi Transport</i>	<i>Purchases of 12,13,655/-</i>	<i>During the statement recording of Sh. Harjeet Singh, the director of M/s Wahi Transport, stated that only transportation services were provided by M/s Wahi transport and transportation charges were charged from you and NO sales were made to you. Sh. Harjeet</i>

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			<i>Singh vide question No.11 in the statement was confronted with the bill submitted by you and he said that "the bill bearing voucher No. 287 dated 30.06.2014 was not issued as per our bill book and also the description on the bills are not as per our bill book."</i>
04.	<i>M/S NSG Enterprises</i>	<i>Purchases Rs. 24,38,052/-</i>	<i>Did not appear in response to the notice u/s 131 of the Act</i>
05.	<i>M/s. Krishna Builders &amp; transport</i>	<i>Purchases Rs.79,82,289/-</i>	<i>Stated sales were made to you during the statement recording</i>
06.	<i>M/s Four Star Horizantion Construction</i>	<i>Purchases Rs.57,19,975/</i>	<i>During the statement recording Of Mr. Anil Kumar, The proprietor of M/s Four Star Horizantion Construction stated that only transportation services were provided to you and accordingly the transportation charges were charged from you and NO sales were made to you where as you have claimed to have made purchases from M/s Four Star Horizantion Construction.</i>
07.	<i>Sh. Prem Prakash Sharma</i>	<i>Purchases Rs.43,42,360/-</i>	<i>Did not appear in response to the notice u/s131 of the Act.</i>
08.	<i>Sh. Jasjit Singh Libra</i>	<i>Purchases of 1,03,74,042-</i>	<i>Did not appear in response to the notice u/s131 of the Act.</i>
09.	<i>M/s SRL. Trading</i>	<i>Purchases of</i>	<i>Did not appear in response</i>

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	Co.	2,37,81,254/-	to the notice u/s131 of the Act.
10.	Sh. Vikas Kumar Taneja	Purchases of 46,12,511/-	Did not appear in response to the notice u/s131 of the Act.
11.	M/s Surender Kumar & Sons	Purchase of Rs. 49,36,687/-	During the statement recording, Sh. Surender Kumar Proprietor of M/s Surender Kumar & Sons, stated that he is involved in the transportation of building material and only transportation charges were charged from you and NO sales were made to you and also stated that No TDS was deducted on the payment made by you.

*Vide order sheet entry dated 28.11.2017, you had been asked to produce the below mentioned parties from which you have claimed purchases of material as summon issued u/s 131 of the Act, were returned back/not responded.*

- 1. M/s NSG Enterprises*
- 2. Prem Prakash Sharma*

*However, neither these parties responded nor you have produced these parties till date. On similar lines, summons issued to M/S SRL Trading Co. and Mr. Jasjit Singh Libra were also not responded/returned back.”*

9. However, the contention made by the assessee was not found acceptable and with the following observation, the Learned AO made addition of Rs.5,81,08,363/- on count of bogus purchase which was

finally deleted by First Appellant Authority. Hence, the instant appeal before us.

10. At the appellate stage, the PAN and confirmation in respect of the above parties has already been filed before the Assessing Officer as contended by the assessee. In support of the same, the confirmation in respect of M/s. NSG Enterprises dated 27.12.2017, Shri Jasjit Singh Libra dated 27.12.2017, M/s. SRL Trading Co. dated 25.12.2017 and Shri Vikas Kumar Taneja dated 26.12.2017 were further been placed by the assessee. Further notice under Section 133(6) of the Act was issued on 06.03.2023 to the said four parties. Notices, however, was not issued to Shri Prem Prakash Sharma who already expired on 27.09.2021. On 16.03.2023, confirmation has been furnished through E-mail by M/s. NSG Enterprises. Copy of ledger account along with PAN and bank statement were also filed before the First Appellate Authority. By and under the E-mail dated 29.03.2023, M/s. Jasjit Singh Libra furnished its confirmation along with PAN and copy of acknowledgement of ITR before the First Appellate Authority. By and under reply dated 14.03.2023, M/s. SRL Trading Company furnished the confirmation along with PAN and acknowledgement of ITR, Bank statement, copy of ledger account through E-mail dated 07.04.2023 were to the Appellate Authority. Similarly, by and under reply dated 13.03.2023 through speed post copy of ledger along with PAN, copy of acknowledgement of ITR and bank statement were furnished to the Learned CIT(A) by Shri Vikas Kumar Tanjea. The details of these documents has already been

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reproduced by the First Appellate Authority in its order appearing from pages 56 to 59 therein. They confirmed that they supplied soil, fly ash, GSB and WWM etc to the appellant company and the amount of transaction were also confirmed by these four parties which matched with the amount of purchases claimed by the appellant. Further that, the appellant company also by and under a submission dated 17.04.2023 filed a clarification in regard to the difference between supply and transportation which has been duly reproduced by the Learned CIT(A) in his order. Upon verifying the entire set of documents as mentioned hereinabove, Learned CIT(A) deleted the addition with the following observation:

*“1.6 The AO had issued summon u/s 131 of the Act to the 11 parties. 6 parties filed their confirmations during assessment stage and 4 parties have filed their confirmations again at appellate stage. Thus 10 parties out of total 11 parties have filed their confirmations in respect of transactions made by them with the appellant company. In respect of one remaining party Sh. Prem Prakash Sharma, the appellant has produced copy of death certificate dated 15.10.2021 bearing registration no. 4014 dated 28.09.2021 issued by Govt. of NCT, Delhi and stated that now the family of the appellant has discontinued the business. Considering that purchases / transportation cost in respect of 10 parties out of 11 parties have been verified and confirmed, the genuineness of transactions made by the appellant company with Late Sh. Prem Prakash Sharma may also be accepted.”*

11. In view of the above factual position as narrated by the Learned CIT(A) i.e. six parties filed their confirmation during the assessment proceedings and remaining four parties before the First Appellate Authority in respect to the transactions made by them with the appellant company save an except Shri Prem Prakash Sharma who already expired

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on 15.10.2021, the genuineness of transactions made by the appellant with those parties has found to be rightly accepted by the Learned CIT(A) and therefore, deletion of addition made by the Learned CIT(A) is found to be just and proper so as to warrant interference. The appeal preferred by the Revenue is, therefore, found to be devoid of any merit and thus dismissed.

12. In the result, appeal of Revenue is dismissed.

**This Order pronounced in Open Court on 27/06/2024**

Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Dated 27/06/2024

*Priti Yadav, Sr.PS\**

**Copy forwarded to:**

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

Sd/-  
(Ms. MADHUMITA ROY)  
JUDICIAL MEMBER

ASSISTANT REGISTRAR  
ITAT NEW DELHI