

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़**  
IN THE INCOME TAX APPELLATE TRIBUNAL  
CHANDIGARH BENCH, 'B', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &  
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. **275/CHD/2024**

निर्धारण वर्ष / Assessment Year : 2021-22

Prime Steel Industries Private Limited, Semi Industry, Plot No. 27, Anaj Mandi Dibra, Sangrur	Vs. बनाम	The DCIT, Circle, Patiala
स्थायी लेखा सं./PAN No: AAGCA3988E		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ REPSONDENT

&

आयकर अपील सं./ ITA No. **500/CHD/2024**

निर्धारण वर्ष / Assessment Year : 2021-22

The DCIT, Circle, Patiala	Vs. बनाम	Prime Steel Industries Private Limited, Semi Industry, Plot No. 27, Anaj Mandi Dibra, Sangrur
स्थायी लेखा सं./PAN No: AAGCA3988E		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ REPSONDENT

( PHYSICAL HEARING )

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate and  
Shri Viboore Garg, CA

राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT DR

सुनवाई की तारीख/Date of Hearing : 24.07.2024

उद्घोषणा की तारीख/Date of Pronouncement : 20.09.2024

## आदेश/Order

### Per Krinwant Sahay, A.M.:

The appeal in this case **(ITA No.275/Chd/2024)** has been filed by the Assessee against the order dated 14.03.2024 of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi.

2. Following Grounds have been raised by the Assessee.

- "1. *That the appellate order is bad both on facts and law to the extent additions are upheld.*
2. *That the Ld. CIT(A), NFAC, Delhi has erred in giving direction for applying gross profit ratio @ 5.94% on the alleged bogus purchases of Rs.68,26,38,327/- as calculated by the Assessing Officer and sustaining part addition against the fact and circumstances of the case.*
3. *That the Ld. CIT(A), NFAC, Delhi has erred in ignoring the documentary evidences of the genuine purchases made by the assessee like Tax invoices of the party, e-way bill, GR, Truck Permit, Vehicle registration Number, AGT receipts, weighing slips, Toll tax slips, Driver License of the Vehicle, Aadhar Card of the Driver, PAN of the Transporter, Driver photo with material loaded in truck at the premises and evidences for payments made in lieu of purchases, confirmed copy of ledger accounts and all other evidences, which proved the genuineness of purchases made by the assessee.*

4. *That the Ld. CIT(A), NFAC, Delhi wrongly and illegally upheld the additions after coining a new term 'untested purchases' merely on guess, surmises and conjectures that too after accepting that goods purchased have been received by the appellant.*
5. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."*

3. The Department has also filed an appeal in **ITA No. 500/Chd/2024** in which following grounds have been taken:-

- "1. *Whether on the facts & in the circumstances of the case, the Ld. CIT(A) was right in law in directing the AO to recomputed the disallowance in respect of bogus purchases at 5.94% of the total bogus purchase.*
2. *Whether on the facts & in the circumstances of the case, the Ld. CIT(A) was right in law in holding that disallowance of bogus purchase be recomputed at 5.94% whereas the GP ratio of 5.94% is a suppressed GP ratio which is arrived at after taking benefit of bogus purchases by the assessee.*
3. *Whether on the facts & in the circumstances of the case, assessee can be given the benefit of suppressed GP ratio in arriving at disallowance of bogus purchases u/s 69C.*
4. *Whether on the facts & in the circumstances of the case & specifically in view of the decision of the Hon'ble Supreme Court in the case Commissioner*

*of Sales-Tax vs M/S. H.M. Esufall, H. M. Abdulali 1973 AIR 2266, 1973 SCR (3)1005, AIR 1973 SUPREME COURT 2266, 1973 2 SCC 137, the bonafide estimate of disallowance arrived at by the Assessing Officer can be disturbed by the Appellate Authority.*

5. *The appellant craves leave to add, amend or delete any of the grounds of appeal during the appellate proceedings."*

4. From the perusal of the above grounds of appeal, it is clearly evident that issue involved in both the appeals of the Assessee and Revenue is same, i.e., on account of bogus purchases.

5. The Id. CIT(A) in his order has given his findings on this issue as under:-

*"10.5 Without prejudice to the above discussion, one crucial aspect of the matter as raised by the AO and the appellant as well that if the sales have been not been doubted, the entire purchase cannot be disallowed as there can be no legit sales without any purchase. The AO, therefore, placing reliance on various judicial precedents held that hundred percent disallowance of the purchase treated as bogus cannot be done when sales are accepted to be valid and only the profit element embedded should be disallowed rather than the whole purchase. Considering these facts, the AO arrived at the conclusion that the purchases were made by the appellant from grey market to increase the profit element for the year and*

*also get relief from paying certain taxes. Hence, 12.5% out of the purchase of Rs. 68,26,38, 327/- i.e. Rs.8,53,29,790/- was disallowed and added to the total income of the appellant.”*

.....

*“10.9 After careful consideration of the facts and circumstances, I am of the opinion that the observation of the AO seems justified that the purchases were indeed made from grey market to shoot up the profit margin but the purchases were not entirely bogus as the sales were considered to be valid and the payments were recorded in the books and the same were made through cheques. However, it was observed that the A.O. determining the profit percentage 12.5% and disallowing the same from the purchase did not appear to be logical.*

*10.10 Accordingly, looking into the facts of the instant case and judicial precedents on the subject, which have held that in case of bogus purchases, if the sale is not in doubt, then only the profit element embedded in such purchases may be subject to tax in the hands the assessee. As the appellant reported the Gross Profit Ratio for the F.Y 2020-21 at 5.94% which comes off as reasonable and therefore, in view of the above discussion giving due diligence to the judicial rulings stated above, the A.O. is therefore directed to re-compute the disallowance at 5.94% of the total bogus purchase. Hence, this contention of the appellant is allowed and consequently Ground No. 5 is partly allowed.*

6. The Ld. Counsel of the assessee brought to our attention that since the issue involved is common in both the appeals, the arguments as being advanced by the ld. Counsel may be considered in both the appeals as stated above.

7. The facts, in brief, as argued by the ld. Counsel of the assessee are that the assessee company is engaged in manufacturing "TMT Bars and M.S. Billet" and audited books of accounts' and during the course of assessment proceedings, the assessee furnished all the requisite details as asked for by the Assessing Officer from time to time and the Assessing Officer arrived at the figure of alleged bogus purchases to the tune of Rs.68,26,38,327/- on the basis of information given by the GST department, giving the names of the parties and other particulars and it was informed by the GST department, that in respect of the above purchases from certain parties, the GST department had cancelled the registration of the parties with retrospective effect and some of the parties had even voluntarily surrendered the GST registration.

8. Further, it was stated that the Assessing Officer had also sent notices u/s 133(6) of the Act to the alleged bogus suppliers but

nobody responded to the said notices and, accordingly, the show cause notice, initially, was issued by the Assessing Officer, dated 07.12.2022. It was vehemently argued by the Ld. Counsel that the assessee filed the following information during the course of assessment proceedings: -

- Copy of confirmation from each party along with CA certificate provided by supplier CA, having 'UDIN No.' on the same.
- Copy of ledger account in the books of supplier.
- Copy of ledger account of party in the books of assessee.
- Copy of relevant extract of bank statement of the assessee highlighting the relevant transaction as proof making the payment by RTGS.
- Copy of all invoices of each party, E-way Bills, Bilty copy, Kanda receipt, along with Toll Plaza Receipt, A.G.T receipt of the H.P. Border entry of goods entering Himachal Pradesh @ Rs. 37.50 per ton, Aadhar card, PAN and Driving license of driver, Photo of driver with the truck, and cheque endorsed in name Truck owner of the payment of freight.

The said sample documents have been submitted, in respect of each and every doubtful party.

- i) The CA of supplier party, also confirmed the GSTR-I, duly filled on GSTR portal by the suppliers for reporting its sales stated above and also confirmed the ledger account.
- ii) On all such invoices, GST Number has been mentioned.
- iii) The E-Way bill of each of above suppliers, which is compulsory for movement of goods, submitted, not doubted. The E-way bill can be generated only when there is a valid/active GST Registration.
- iv) Copies of the Truck Bilty i.e. GR, in which, the goods were loaded and supplied to the assessee company, not doubted.
- v) goods having been transported to the premises of assessee was also filed in the shape of following documents: -
  - Copy of the Truck permit, which proves that Vehicle/Truck Number having valid permit for transporting the goods from concerned state to the assessee premises. Copy of the Driver License, who operated the Vehicle and supplied the goods to the assessee.
  - Copy of the Aadhar Card of the Driver, Pan Number of Truck Owner/Transporter, Contact Number of the Driver.

- Copy of the cheque for freight payment endorsed in the name of Truck owner, Signature of the driver, who verified and certified the delivery of goods and address of the driver.
- Passenger and goods Tax Collection Receipt vide Rule-9C(4)(5) (6) and 19(2) of Himachal Pradesh Passengers and Goods Taxation Rules, 1957. This is the main document for entry on the H.P. Border to prove the entry of Vehicle with requisite goods and its additional tax.
- Toll Tax receipt of 'Himachal Pradesh State'
- The photograph of loaded truck along with truck driver along with location stamp (Google location) being valid proof of receipt of material is there in each and every invoice.

9. Further, it was vehemently argued that the assessee has filed the evidences for purchase of goods, payments of goods, transportation and delivery of goods before AO & CIT(A) both.

10. It was further argued that as and when the truck carrying the raw material enters the State of Himachal Pradesh, there is levy of 'additional goods tax' by the State Excise Department, Himachal Pradesh and our attention was drawn to the the assessment order of

"Additional Goods Tax on Iron & Steel u/s 4A of H.P. PGT Act 1955" for the relevant financial year was furnished in order to substantiate that such raw material as purchased from the alleged doubtful parties entered to the State of Himachal Pradesh and ultimately to the premises of the assessee at Barotiwala.

11. Further, the counsel of assessee argued that all the records of the purchases in quantity and amount have been maintained, as well as, record in respect of sales, production register, stock register and day to day consumption register to prove that the goods as purchased from alleged bogus parties have gone into production and the Ld. Assessing Officer and CIT(A) have not been able to find out any defect in such maintenance of voluminous record and corresponding sales out of such material from the doubtful parties have not been doubted.

12. Regarding the cancellation of GST Numbers retrospectively, it has been argued that the Assessing Officer has failed to appreciate that as on the date when we have bought the goods from the respective parties, the parties had valid GST Number and also that the 'e-way bill' at that particular time could be generated only, when there was a valid GST Number and, if subsequently, the GST

department cancelled the GST Number or such parties have surrendered the GST registration, no adverse view could be drawn against the purchases already made. Our attention was drawn by the Ld. Counsel to rule 138 of GST rules, wherein, it is pointed out that the 'e-way bill' can be issued by a person, who has valid registration Number and 'e-way bill' cannot be issued manually, but it is filled online and generated through online 'portal' and bears a unique number prior to movement of goods. Further, as per 'rule 138, 'e-way bill' cannot be issued, if the registered person has not filed GST return for two consecutive two months and e-way bill cannot be issued if the GST Registration has been cancelled.

13. The Ld. Counsel of the assessee also stated that the GST Registration was valid at the time of generation of 'e-way bill' and that the assessee had purchased the, goods only when the GST registration of the supplier was 'active'. Thus, no doubt could be raised on such purchases made from the alleged doubtful parties.

14. The Ld. Counsel of the assessee also relied upon the judgment of Calcutta High Court in the case of M/s LGW Industries Limited and Ors, vs. Union of India & Ors.in WPA No. 23512 of 2019, dated 13.12.2021, in which, the Hon'ble High Court has held as under:-

*"if it is found upon considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers and after taking into consideration the judgments of the Supreme Court and various High Courts, which have been referred in this order and in that event the petitioners shall be given the benefit of input tax credit in question."*

15. Similar view has been taken by the Calcutta High Court. in the case of 'Sanchita Kundu Vs Assistant Commissioner of State Tax' in WPA No. 7231 of 2022, dated 05.05.2022.

16. Further, the Ld. Counsel of the assessee brought to our attention that, though, the notices were issued u/s 133(6) to the alleged doubtful parties and they did not respond and for that, the Ld. Counsel of the assessee relied upon the judgment of 'Apex Court' in the case of CIT Vs Orissa Corporation reported in 159 ITR 0078 and judgment of ITAT Delhi in ITA No. 6599/2014, dated 12.12.2018, in which, it has been held that the assessee having filed the confirmed copies of account of the parties and apart from issuance of notice u/s 133(6), the Assessing Officer did not pursue the matter further and under such circumstances, the assessee could not do

anything further and, as such, no adverse view could be drawn on such non-communication by the parties concerned.

17. It was further argued that the Ld. Assessing Officer after considering all the facts and circumstances, finally rejected the books of accounts of the assessee u/s 145(3) as per the order of Assessing Officer and, regarding the alleged bogus purchases of Rs.68,26,38,327/-, he held that the purchases have been made, may not be from the same parties, as it was claimed to have been made, as per finding given by the Assessing Officer. It was held that only profit embedded in such bogus purchases could be disallowed and applied a rate of 12.5% on total purchases of Rs. 68,26,38,327/- and made disallowance of Rs. 8,53,29,790/-.

18. The Ld. Counsel of the assessee referred to order of CIT(A) where, the issue of bogus purchases have been discussed by the Ld. CIT(A) and the detailed submissions of the assessee have been reproduced in the order and the finding on this issue have been discussed from. The CIT(A) has disproved the finding of the Assessing Officer with regard to rejection of books of accounts u/s 145(3) of the Act and, finally he had held that only profit element embedded in

such purchases may be subjected to tax and applied the gross profit ratio for the financial year under consideration @ 5.94% on the total alleged bogus purchases and against that, the assessee is in appeal and, whereas, the department is in appeal only upon the deletion of above addition on account of such bogus purchases, wherein, the Assessing Officer had applied a rate of 12.5% on the alleged bogus purchases of Rs. 68,26,38,327/-.

19. The Ld. Counsel of the assessee has argued that the CIT(A) having accepted the books of accounts of the assessee and rejected the contention of the Assessing Officer about the rejection of books of accounts, thus, no doubt could be made on account of sale and purchases and neither with regard to quantum of purchases and stock record and other quantitative details having not been disproved, either by the Assessing Officer/CIT(A) and relied upon on number of judgments of jurisdictional Punjab & Haryana High Court in the case of CIT Vs Om Overseas, reported in 315 ITR 185 (P&H), Delhi High Court in the case of CIT Vs. Paradise Holidays, 325 ITR 13 and other case laws that under such circumstances, where no specific defects have been pointed out in the maintenance of record,

the addition on account of 'profit embedded' in respect of alleged bogus purchases cannot be sustained.

20. The Ld. Counsel also relied upon the number of judgments of Hon'ble 'Apex Court', Punjab & Haryana High Court and also the judgment of ITAT in the case of M/s Supertech Forgings (India) Pvt. Ltd. in ITA No. 6599/2014, vide order, dated 12.12.2018, which has been approved by the Hon'ble Punjab & Haryana High Court in ITA No. 10/2022 and many other judgments of different Benches of the Jurisdictional ITAT and Others for the proposition that since the sales have not been doubted and inflation in the purchases and no defects have been found in day to day maintenance of quantitative record, consumption register, stock tally and, as such, no addition could be made on account of such bogus purchases.

21. Further, as regards the profit element embedded, the Ld. Counsel drew our attention to the chart submitted before the Ld. CIT (A) for the proposition that the finding of the Authorities below regarding the profit embedded in such purchases, is wholly misconceived and not sustainable, because the rates on which, the material have been purchased from the alleged doubtful parties, is same or less than the rates with regard to the rates of other parties

and that chart is self-explanatory and from the said chart, it was argued vehemently that since there is no inflation in respect of purchases made from the alleged doubtful parties, whole basis of applying the gross profit or profit embedded as applied by the Assessing Office or CIT(A) is out of context and that finding deserves to be quashed. Our attention particularly was drawn to the judgment of Apex Court in the case of CIT Vs Century Plyboards (I) Ltd. reported in [2019] 153 taxman.com 179, it has been held as under:-

*"Section 69C, read with section 263, of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - After completion of assessment, Commissioner received a complaint from Director General that assessee had entered into bogus purchase transactions with one 'D' - On basis of said complaint, Commissioner passed a revisional order setting aside assessment - In appellate proceedings, Tribunal having noticed copies of invoices and challans, proof of payments, bank statements, transportation payments, vouchers for movement of goods and like documents, concluded that transactions between assessee and 'D' were not bogus or fraudulent - Accordingly, impugned revisional order was set aside - High Court upheld order passed by Tribunal - Whether, on facts, SLP filed against decision of High Court was to be dismissed - Held, yes [In favour of assessee]."*

22. Our attention was also drawn to the judgment of Supreme Court in the case of PCIT Vs Tejua Rohit Kumar Kapadia, reported in 94 taxman. Com 325, in which, it has been held as under: -

*"Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessing Officer had disallowed some expenditure treating purchases as bogus and made addition - High Court in impugned order noted that purchases made by assessee-trader were duly supported by bills and payments were made by account payee cheque and seller also confirmed transaction and there was no evidence to show that amount was recycled back to assessee, and held that addition was not called for - Whether, on facts, SLP against said order was to be dismissed - Held, yes - In favour of assessee.*

23. Our attention is also invited to the judgment of Punjab & Haryana High Court in the case of CIT Vs Leaders Valves (P) Ltd. reported in 285 ITR 435, in the said judgment, it has been held as under:-

**Held :**

*"The analysis and conclusions drawn by the CIT(A) on the appreciation of material on record, have been concurred with by the Tribunal after taking notice of the fact that the trading results of the assessee had all along been accepted and the purchases of scrap from the seven parties could also be not termed as bogus for the reason that in the subsequent assessment year, i.e., 1987-88, the purchases from these very parties stood accepted by the*

*Department to a very substantial extent. The Tribunal, as a matter of fact, noticed that no sale invoices were found to be undervalued or the purchases inflated, yet the extraordinary profit in respect of goods sold to MP Ltd., and as recorded in the books of account which ought to have been taken favourably qua the assessee. was considered "adverse" by the AO by adopting an erroneous approach. The Tribunal also affirmed the conclusion drawn by the CIT(A) that KE and SE are existing parties doing business of scrap metal and had vast financial resources at their disposal. Similar conclusion was drawn by it in respect of SP and AS also. The assessee's contention that out of total purchases of nonferrous metals of Rs. 2.44 crores, the AO had treated purchases worth Rs.1.49 crores only as bogus and it was impossible to manufacture the goods shown to have been manufactured by it out of the remaining purchases if the AO's conclusion is accepted, also found favour with- the Tribunal. This is a simple finding of fact based upon appreciation of the material on record and, thus, hardly gives rise to any question of law."*

24. The Ld. Counsel of the assessee has drawn our attention to the documentary evidence on account of delivery of raw material at the factory premises and there is documentary evidence of the goods having been entered into the State of Himachal Pradesh, where the Unit of the assessee is located at Barotiwala, Distt. Solan, H.P. and sales have been accepted by the CIT (A), the books of accounts of the assessee stands accepted and it was found that no sales were

undervalued or the purchases were inflated. Though, both the assessee and department have accepted the fact that the raw material have been reached at the factory premises of assessee concern and regarding the profit element, since it has been proved by the assessee, beyond any iota of doubt that since the purchases were not under-valued or inflated and, thus, the sustaining of addition by applying the gross profit rate of 5.94% on the alleged bogus purchases was not justified and the appeal of the department be dismissed.

**ITA No. 500/Chd/2024 – Revenue’s Appeal :**

25. Now, we shall deal with the appeal filed by the Revenue.

26. The Ld. CIT, DR brought to our attention to the facts and circumstances of the case based on addition made by the Assessing Officer and argued that the notices sent to the doubtful parties u/s 133(6) were not responded to by those parties and, thus, the said parties are bogus and, as such, the Assessing Officer was fully justified in applying a profit rate of 12.5% on such purchases of raw material from the parties concerned. It was also argued by the Ld. CIT, DR that the information was received from the GST department about such parties being bogus and the GST department had

cancelled the GST registration of the parties with retrospective effect and, thus, the very authenticity of the parties in existence was doubtful and, thus, the rates on which, the raw material have been purchased by the parties could not be said to be verifiable.

27. It was stressed before us that though, the Assessing Officer has accepted that in fact, the goods were not purchased from the parties as claimed by the assessee but from the other parties, and the Assessing Officer has not doubted the sales, it could be most appropriate if the profit' element embedded to the tune of 12.5% on such bogus purchases be sustained.

**Our findings :-**

**For ITA Nos. 275 & 500/Chd/2024 (Assessee & Revenue appeal)**

28. We have considered the findings of the ld. CIT(A) in his order, submissions filed by the ld. Counsel of the Assessee and his arguments during the proceedings before us. We have also considered the arguments put forward by the ld. DR on these issues. We find that the Assessing Officer has made addition of Rs. 8,53,29,790/- at the rate of 12.5% on doubtful purchases of Rs. 68,26,38,327/-. The Assessing Officer in his order has given his findings that there may be inflated price on which the Assessee might have procured the raw

material and because of this reason the Assessing Officer rejected the books of account but at the same time he did not doubt the manufactured and finished goods out of such alleged purchases. But in his opinion, the profit margin can be high on purchases from unverifiable parties, therefore, the Assessing Officer calculated the profit @ 12.5%. We further find that the ld. CIT(A) in his order has accepted that purchases were genuine (though found from unverifiable sources) because goods manufactured from such purchases were accepted by the Assessing Officer and the CIT(A) has also given his finding that the rate of procurement of such purchases by the Assessee are either at par or even below the market rate on which the Assessee has procured such alleged purchases. Accordingly, the CIT(A) has accepted the books of account of the Assessee and he has calculated the profit @ 5.94%, which is the declared GP rate by the Assessee. The Department has come in appeal against this action of the CIT(A) and the ld. DR argued vehemently for accepting the profit rate from purchase at the rate of 12.5%, as calculated by the Assessing Officer, in the assessment order.

29. We have considered the findings of both the Assessing Officer as well as ld. CIT(A) and we find the ld. CIT(A) has accepted the books of

account presented by the Assessee which was earlier rejected by the Assessing Officer and he has also accepted that the alleged purchases were made at par of other purchases made or even at lower rates. In such a situation, we find no reason to sustain any addition made on this ground, it is because if such alleged purchases were either at par to the rate of other purchases or at lower rate than the purchases made in the books of account, then, where is the possibility of earning extra income ( i.e. from so called profit embedded purchases ) from such purchases?.

30. Keeping in view these facts as well as various case laws brought on record by the Id. Counsel of the Assessee, the findings of the CIT(A) of restricting the disallowance @ 5.9% for such alleged purchases from bogus parties cannot be sustained. Accordingly, Assessee's appeal on this ground is allowed.

31. As we have already dealt with this issue raised by the Department in its appeal as discussed above, therefore, Departmental appeal on this issue is dismissed.

32. In the result, the appeal of the Assessee is allowed whereas, the appeal filed by the Revenue stands dismissed.

Order pronounced on 20.09.2024.

**Sd/-**  
**( A. D. JAIN )**  
**Vice President**

“आर.के.”

**Sd/-**  
**( KRINWANT SAHAY )**  
**Accountant Member**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,  
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar