

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'C': NEW DELHI)**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER,**

**ITA Nos:- 2252 and 2253/Del/2014
(Assessment Years- 2007-08 and 2008-09)**

Himachal Futuristic Communications Ltd., 8, Commercial Complex Masjib Moth, Greater Kailash-II, New Delhi.	Vs.	Dy. Commissioner of Income Tax, Central Circle-1, ARA Centre, Jhandewalan Extn. New Delhi.
PAN No: AAACH4041D		
APPELLANT		RESPONDENT

Assessee by : Shri Gaurav Kabra, CA
Revenue by : Shri Dayainder Singh Sidhu, CIT(DR)

Date of Hearing : 26.11.2024
Date of Pronouncement : 26.11.2024

ORDER

PER MAHAVIR SINGH, VP

These two appeals by the assessee are arising out of the different orders of Commissioner of Income Tax (Appeals)-3, New Delhi, vide different orders dated 03.03.2014 and 05.03.2014 in appeal numbers 341 and 342/09-10/CIT(A)-III, New Delhi. The

Assessments were framed by the DCIT, Central Circle-1, for the relevant Assessment Years 2007-08 and 2008-09 under Section 153(A) read with Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide orders of same dated 29.12.2009.

2. The only common issue in these two appeals of the assessee is as regards to the orders of CIT(A), which confirmed the action of the AO in making additions for bogus purchases amounting to Rs. 60,16,369/- in the assessment year 2007-08 and Rs. 2,91,05,752 in the assessment year 2008-09. For this issue, assessee has raised the various grounds, which are argumentative and factual and need not be reproduced. Facts relating to these two appeals are identical with common issue and grounds raised are also identical. Hence, we will take the facts from assessment year 2007-08 and will decide the issue accordingly.

3. Brief facts relating to assessment year 2007-08 are that search action u/s 132 of the Act was conducted at the assessee group of companies at the business premises of 8 commercial Complex, Masjid Moth, Greater Kailas-II, New Delhi on 10.05.2007.

Consequent upon search notice u/s 153A of the Act dated 12.08.2008 was issued to the assessee and consequent to that, the assessee filed its return of income on 25.02.2009. The assessee company was engaged in the manufacturing and trading of indigenous telecom equipment in India. The AO during the course of assessment proceedings noted that the Investigation Wing during the course of search, came to know that the assessee is inflating its purchases by way of introducing purchase bills from different parties which are not verifiable. According to the AO, based on search materials in regard to the present issue, noted that the assessee has indulged into bogus purchases of Rs. 60,16,369/- and this was confirmed by Shri Ashish Madan, Director of the OPM Trading Pvt. Ltd., before the Investigation Wing on 19.05.2007 and again on 23.05.2007 Shri Ashish Madan stated that the raw material as required by assessee was directly supplied by the supplier and OPM Trading Pvt. Ltd. involved only in price negotiation and credit facilitation. Accordingly, the AO carried out the inquiry and required the assessee to explain as to why the purchases should not be treated as bogus purchase and added to the returned income of the assessee. The assessee furnished reply

to the show-cause notice, stated that the purchase and sales transaction with OPM Trading Pvt. Ltd. cannot be alleged as bogus as they are carried out in the normal course of business and have been properly reflected in the books of accounts. The transactions were settled by way of account payee cheques with OPM Trading P. Ltd. and even confirmed by OPM Trading Pvt. Ltd. in pursuant to notice U/s 133(6) of the Act. The assessee further stated in its reply that the profit arising out of transactions of sales and purchases with OPM had also been included in the taxable income, and hence transaction is genuine. The assessee stated that even the sales were not in doubt and that the sales were made to the K.G. Traders. The details given by the assessee in its reply read as under:

AY	Purchases (RS)	Sale (Rs)	Profit (RS)	Remarks
2007-08	60,16,369	64,97,678	4,62,797	Sales made to KG Traders
2008-09	2,91,05,752	2,94,71,135	3,51,330	Sales made to KG Traders

4. The AO has not accepted the explanation of the assessee and confirmed the addition by stating that the purchase bills of OPM do not contain details of the goods purchased and so is not in the to verify the same with regard to sales bills. Hence, the purchases cannot be correlated with the sales and assessee's claim of admitting the profit arising out to the same is not verifiable. The AO noted that the assessee has not furnished books of accounts or the Stock Register from which the above transaction can be verified. He noted that even the OPM Trading Pvt. Ltd., could not elaborate the mode of transportation of the goods or the supply or the goods. In view of the statement of Shri Ashish Madan, the Director of OPM Trading Pvt. Ltd, wherein he categorically stated that they only help in price negotiation and credit facilitation of the assessee and for the same the company keep a small margin or the commission was the profit of OPM trading Pvt. Ltd, the transactions of purchases are not verifiable. The statement was correlated with the given document found during the course of search i.e. document no. O-1/A-4 page 54 of the seized documents clearly reveals the modus operandi adopted by the assessee for incorporating artificial purchases in the books of accounts. Hence, AO made the additions

of these purchases, the same as bogus by observing the para 4.5 as under:

“Keeping in view the above facts, it is held that the purchases shown by the assessee from M/s OPM Trading Pvt. Ltd. are not genuine purchases and the bills have been raised to inflate the purchases and to reduce the profit. In view of these facts, the following additions are made:

<i>Assessment Year</i>	<i>Amount of Purchase</i>
<i>2007-08</i>	<i>60,16,369</i>
<i>2008-09</i>	<i>2,91,05,752</i>
<i>Total</i>	<i>3,51,22,121</i>

Aggrieved, the assessee preferred an appeal before the CIT(A).

5. The CIT(A) upheld the action of the AO, by observing at para 5 as under:

“5. In this regard, it is seen that on the basis of the statement of two employees, the additions have been made and these additions have been raised by the appellant in other grounds of appeal, relating to the appellant’s claim of deduction under section 80IB and disallowance of R & D expenditure, which have duly been discussed in detail in later part of this order, hence this ground does not need any adjudication.”

Aggrieved, the assessee is in appeal before the Tribunal.

6. We have heard rival contentions and gone through the facts and circumstances of the case. We note that the assessee is engaged in the manufacturing and trading of indigenous telecom

equipment in India. The assessee declared purchases from OPM trading Pvt. Limited for the Financial Year 2006-07, relevant of assessment Year 2007-08, amounting to Rs. 60,16,369/-. The assessee also disclosed sales made out of the same to M/s K.G. Traders and disclosed a profit at Rs. 4,62,797/-. The Assessing Officer simply noted the fact that purchase bills of OPM do not contain details of goods purchased by the assessee, and similarly, the sales bills of assessee also does not the same. In our view, the AO has noted carried out the examination of purchases recorded in the books of account rather just relied on the statement of Shri Ashish Madan, Director of OPM. In our view, once the assessee has disclosed the sales made to K.G. Traders out of purchases made from OPM trading Pvt. Ltd., and recorded in the books of account without being doubted or established, the sales are not made out of the same, at the best, AO can estimate the profit made on the same on bogus purchase. In our view, a reasonable profit of 10% on the bogus purchases will meet the end of justice and accordingly we direct the AO to recompute the income after estimating the profit at the rate of 10% on the bogus purchase of Rs. 60,16,369/- for the financial year 2006-07, relevant to the assessment year 2007-08.

In the terms of above, the appeal of the assessee for the assessment year 2007-08 is partly allowed.

7. Coming to the appeal for the Assessment Year 2008-09, as we have already noted, the facts and circumstances of the issue are same and identical. Taking a consistent view, we direct the AO for this year as well to adopt a profit rate at 10% on the bogus purchases of Rs. 2,91,05,752/- and accordingly recompute the income. This issue of the assessee's appeal is also partly allowed.

8. In the result, both appeals by the assessee are partly allowed.

Order pronounced in the Open Court on 26.11.2024

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Dated: 26 /11/2024.
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	27.11.24
Date on which the typed draft is placed before the dictating Member	27.11.24
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	