

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.3236/Del/2024
Assessment Year: 2022-23

Income Tax officer, Noida	Vs.	Clean Crop India Pvt. Ltd., Flat No. 211, Bha Millennium Towers, Plot B- 9/17, Sector-62, Noida, Gautam Buddha Nagar, Uttar Pradesh
PAN: AAICCC0064D		
(Appellant)		(Respondent)

Assessee by	Sh. N.K. Bansal, CA
Department by	Sh. Rajesh Kumar Dhanesta, Sr. DR

Date of hearing	23.04.2025
Date of pronouncement	21.05.2025

ORDER

PER SATBEER SINGH GODARA, JM

This Revenue's appeal for assessment year 2022-23, arises against the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre [in short, the "CIT(A)/NFAC"], Delhi's DIN and order no. ITBA/NFAC/S/250/2024-25/1064871967(1), dated

14.05.2024, involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties. Case file perused.

3. Coming to the Revenue's sole substantive ground raised in the instant appeal seeking to revive the Assessing Officer's action disallowing the assessee's 12.5% purchases as non-genuine, coming to Rs.3,59,42,111/- in the course of his assessment framed on 13.03.2024, both the parties invited our attention to the CIT(A)/NFAC's detailed lower appellate discussion reversing the same as under:

"6. Adjudication:

6.1 Appellant has taken 8 Grounds of appeal. Appellant has submitted that Ground No. 1 and 2 and 7 and 8 are general in nature and hence they have not been pressed. In view of the above the grounds are not being adjudicated upon.

6.2 Ground Number 3 to 5 are related with addition made on account of in genuine purchases and thus these grounds are being dealt with together.

6.3 During the course of the assessment proceeding the assessing officer noted that "In this regard, the assessee has submitted copies of confirmation. However, these copies do not carry signature of the third parties. The confirmation is signed by the assessee itself. The assessee has submitted copy of bank statements highlighting the payments made. However, the assessee has failed to file copies of return of income along with balance sheet filed by the above third parties. It is seen that all the documents supporting the purchases submitted by the assessee are self made. Though the assessee has submitted copy of PAN in few cases and transportation invoices in respect of 2-3 parties, the assessee has failed to submit any document that would actually prove the identity and genuineness of the above mentioned third parties or any other documentary evidences proving the genuineness of the purchases made.

4.6.4 Considering the above facts that the assessee has not discharged the onus put on it to prove the genuineness of the

transaction, it is held that the assessee has not made purchases from the above stated parties but from some parties in the grey market.

4.6.5 In the instant case notices u/s 133(6) of the Income tax Act were issued to all the above mentioned third parties through ITBA as well as insight portal. In response to these notices none of the parties have responded and given their confirmation.

4.6.6 The assessee has not proved the source and nature of the transactions. There are no details explaining that the purchases were actually made from the parties mentioned above as the assessee has failed to submit any documentary evidences which would prove that the purchases were actually made from these parties. The notices issued to these third were not complied with and no relevant material and evidences were submitted by the assessee in respect of purchase made from these above mentioned third parties. Therefore, the genuineness of the transactions remains to be proved.

4.6.7 In view of the above the case of assessee is decided on the lines of the decision of the Hon'ble Gujarat High Court in the case of Commissioner of Income Tax vs. Bholanath Poly Fab P. Ltd. (20130 355 ITR 290(Gujarat). The Hon'ble Gujarat High Court vide its order dated 23.10.2012 upheld the finding of the Tribunal that though the purchases were made from bogus parties but purchases themselves were not bogus as entire quantity of stock was sold by the assessee and hence only the profit margin embedded in such purchases would be subjected to tax and not entire purchases. The Hon'ble Gujarat High Court in the case of Commissioner of Income Tax vs. Simit P. Seth (2013) 356 ITR 451 upheld the order of the Tribunal directing an addition to the extent of 12.5% of bogus purchases.

4.6.8 On perusal of trading and profit and loss account it is seen that the assessee has shown purchases of Rs.28,75,36,893/- and sale of Rs.29,12,54,297/-. In view of the above mentioned facts and considering the above said judgments, 12.50% of non genuine purchases amounting to Rs.28,75,36,893/- (purchases not made from the parties from whom it is purported to have been made) being the profit element embedded in the said non genuine purchases which were sourced from the grey market which comes to Rs.3,59,42,111/- is added to the returned income of the assessee for the year under consideration. In view of the above mentioned facts and considering the above said judgments, 12.50% of non genuine purchases amounting to Rs.28,75,36,893/- (purchases not made from the parties from whom it is purported to have been made) being the profit element embedded in the said non genuine purchases which were sourced from the grey market which comes to Rs.3,59,42,111/- is added to the returned income of the assessee for the year under consideration.

6.4 In reply the appellant has submitted that "the appellant filed all the documents/ interactions with the parties.

1. *Registration numbers of the Lorries were got verified from the portal of State Transport Department.*
2. *Even the passing of the trucks were got verified from Toll Plaza receipts. And the appellant has in possession all the documents like Tax invoices, Eway Bills, WeightSlips, unloading pics and confirmation of material receipt from the customers.*
3. *The confirmation copies of account of parties received on whatsapp were filed.*
4. *In respect to the allegation of Ld. AO that the documents are self-made it is submitted that these confirmations were received (and not self-made) during the same year on whatsapp (as the date of message suggest) and therefore it does not contain the signatures.*
5. *Even the whatsapp chat window for that time period, attached as Annexure-A, with the agent is attached. Please take a note of discussion, that shows that we are asking agent to provide us with the books of account and in turn the copy of account of parties are being forwarded to us by agent and not made by us as alleged by the Ld. AO.*
6. *In some cases even the confirmation/ copy of account, invoices, E-way Bills etc. were received by us through courier and the copies of those envelopes for 3 parties are enclosed as Annexure-B for the kind perusal of your honour, which again shows the transactions have taken place from genuine parties. Again if the documents were self-made there would not have been a need of a courier.*
7. *Party's ledgers thus obtained tally with our books of accounts. Copy of Account of 4 parties were received via whatsapp and that in fact covering for more than 70% of the transactions in question by value terms.*
8. *All the transactions are done in Bill to Ship to mode and deals are on F.O.R. basis. Names of the Parties are also mentioned on the Lorry receipt (LR) on all transaction. It shows that the material is dispatched by them. A few sample Lorry Receipt is attached as Annexure-C."*

6.5 *In view of the submission made by the appellant it is clear that he has discharged the onus of proving the genuineness of the parties from whom purchases have been made.*

6.6 *In the case of Geolife Organics v. Assistant Commissioner of Income-tax-23(2), Mumbai [2017] 88 taxmann.com 756 (Mumbai - Trib.) Hon'ble Tribunal has held that where Assessing Officer had not brought any material on record to conclusively establish fact that purchases were bogus, merely relying upon information from Sales Tax Department or fact that parties were not produced Assessing Officer could not have treated purchases as bogus and made addition.*

6.6 Further in the case of *Commissioner of Income-tax-1, Mumbai v. Nikunj Eximp Enterprises (P.) Ltd.* [2013] 35 taxmann.com 384 (Bombay) Hon'ble Bombay High Court has held that "from the order of the Tribunal dated 30-04-2010, we find that the Tribunal has deleted the additions on account of bogus purchases not only on the basis of stock statement i.e. reconciliation statement, but also in view of the other facts. The Tribunal records that the Books of Accounts of the respondent-assessee have not been rejected. Similarly, the sales have not been doubted and it is an admitted position that substantial amount of sales have been made to the Government Department i.e. Defence Research and Development Laboratory, Hyderabad. Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were infact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the CIT(A), one cannot conclude that the purchases were not made by the respondent-assessee. The Assessing Officer as well as CIT(A) have disallowed the deduction of Rs.1.33 crores on account of purchases merely on the basis of suspicion because the sellers and the canvassing agents have not been produced before them. We find that the order of the Tribunal is well a reasoned order taking into account all the facts before concluding that the purchases of Rs.1.33 crores was not bogus. No fault can be found with the order dated 30-04-2010 of the Tribunal."

6.7 Thus in view of the submissions made by the appellant and confirmations filed and the court rulings the addition made is deleted. Hence ground No. 3 to 5 of the appellant are allowed."

4. This is what leaves the Revenue aggrieved who is in appeal before us.

5. Learned departmental representative vehemently argues during the course of hearing that the Assessing Officer had rightly disallowed only a portion of the assessee's non-genuine purchases herein. He could hardly dispute the clinching fact that there is not even an indication in the case file as to which ones are the assessee's specific purchases liable to be disallowed for want of

genuineness therein, in the case records. We wish to clarify here that the assessee has all along pleaded and prove its impugned purchases as genuine by filing its supportive evidence wherein no specific discrepancies have been noted in the assessment findings. We thus reject the Revenue's endeavour to disallow the assessee's impugned purchases at flat rate of 12.5% to uphold the CIT(A)'s findings in very terms. Ordered accordingly.

6. This Revenue's appeal is dismissed.

Order pronounced in the open court on 21st May, 2025

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 21st May, 2025.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi