

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

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND**

**SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No. 3482/Del/2024 (A.Y. 2022-23)**

Sushil Kumar Shreeram Overseas 5520, BastiHarpull Singh, Sadar Bazar, Delhi <b>PAN: AALPK5068M</b>	Vs.	ACIT Circle-22(2) C. R. Building, Delhi
<b>Appellant</b>		<b>Respondent</b>

Assessee by	Sh. Amit Goel, Adv and Sh. Pranav Yadav, Adv
Revenue by	Sh. Mahesh Kumar, CIT(DR)

Date of Hearing	07/05/2025
Date of Pronouncement	04/06/2025

**ORDER**

**PER YOGESH KUMAR, U.S. JM:**

The present appeal is filed by the Assessee against the order of the Ld. CIT(A)/National Faceless Appeal Centre ('NFAC') for short)- Delhi dated 10/07/2024 pertaining to the Assessment Year 2022-23.

2. The Grounds of Appeal are as under:-

*"1. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the addition of Rs. 12,50,99,530/- made by the AO*

*2. On the facts and circumstances of the case and in law, the assessing officer erred in invoking provisions of section 145(3)*

*of the Act and rejecting books of accounts of the appellant and CIT(A) erred in not holding so.*

*3. On the facts and circumstances of the case and in law, the assessing officer erred in passing order u/s 144 of the Act and CIT(A) erred in not holding so. On the facts and circumstances of the case and in law, no notice under section 143(2) issued is invalid and non-est and CIT(A) erred in not holding so.”*

3. Brief facts of the case are that, the Assessee filed return of income declaring total income of Rs. 95,42,440/-. The return of the Assessee was processed u/s 143(3) of the Income Tax Act, 1961 ('Act' for short). Subsequently, the case was selected for scrutiny through CASS on the reasons that '*High liabilities as compared to low income/receipt and Assessee has made substantial purchases from suppliers who are non-filer(s)*'. An Assessment order came to be passed u/s 144 r.w. Section 144B of the Act by making addition of Rs. 12,50,99,530/- by establishing the profit @ 10% on the turnover. Aggrieved by the assessment order dated 28/03/2024, the Assessee preferred an Appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 10/07/2024, dismissed the Appeal filed by the Assessee. Aggrieved by the order of the Ld. CIT(A) dated 10/07/2024, the Assessee preferred the present Appeal on the grounds mentioned above.

4. Ground No. 1 to 3 are relate to addition of Rs. 12,50,99,530/- made by the A.O. which has been upheld by the Ld. CIT(A). The Ld. Counsel for the Assessee vehemently submitted that the Ld. A.O. committed gross error in rejecting the books of account on frivolous reason and without any basis, the Ld. A.O. estimated the profit @ 10% on the sales of Rs. 1,33,64,19,742/- ignoring the fact that the accounts of the Assessee were duly audited. Further, submitted that, without pointing out any specific defect in the books of account of the Assessee, the Ld. A.O. rejecting the books of accounts and made addition. The Ld Counsel further submitted that the Assessee has produced the details of purchase, sales and stock, Item wise stock register (Qty wise and amount wise), Copy of all sales bills and e-way invoices, Copy of all purchase bills and e-way invoices, Copy of complete bank statement of all banks, Details of expenses as sought by the assessing officer, Copy of All GST returns, Details of party wise purchase and also the Details of party wise sales before the A.O. Further submitted explanation with documentary evidences in respect of each and every purchase and sale party in respect of which explanation was sought by the assessing officer were also submitted. However, the A.O. has not appreciated considered the those documents and the submission of the Assessee and made the addition which has been erroneously sustained by the Ld.

CIT(A). The Ld. Counsel further submitted that documents containing 4135 pages have been uploaded on the multiple occasions, which were considered by the A.O. and even after that the A.O. made the erroneous addition which has been confirmed by the Ld. CIT(A). The Assessee once again filed all those documents before us in the paper book. Thus, the Ld. Assessee's Representative sought for allowing the Appeal.

5. Per contra, the Ld. Departmental Representative submitted that after verification of the documents produced by the Assessee, A.O. found that the third parties/firm from which the Assessee claimed to have made the purchases were not active. In some cases, GST Number was cancelled/suspended, therefore, the purchase details submitted by the Assessee cannot be acceptable. The Ld. Department's Representative further submitted that some of the third parties/suppliers have not filed their Income Tax Return and GST Returns for the year under consideration, therefore, the documents produced by the Assessee were not believed by the Lower Authorities and rightly made the addition, which requires no interference at the hands of the Tribunal. The Ld. Departmental Representative relying on the findings and conclusion of the Lower Authorities, sought for dismissal of the Appeal.

6. We have heard both the parties and perused the material available on record. During the assessment proceedings, a show cause notice has been issued to the Assessee on 25/02/2024 by proposing the following additions:-

<i>S. No.</i>	<i>Particulars</i>	<i>Amount</i>
1	<i>Unsecured loans</i>	<i>5,74,76,559</i>
2	<i>Sundry creditors</i>	<i>7,74,13,954</i>
		<i>13,48,90,513</i>
3	<i>Purchase from 13 parties</i>	<i>32,56,61,364</i>

7. In response to the above show cause notice, the Assessee submitted reply on 01/03/2024 to the A.O. The said reply and the acknowledgement for the reply are produced before us in Page No. 7 to 10 of the Paper Book. After going through the reply filed by the Assessee, A.O. found that the explanation given by the Assessee is satisfactory and accordingly, not made any addition which has been proposed in the show cause notice dated 25/02/2024.

8. Further, the Ld. A.O. issued one more notice on 13/03/2024 proposing to make entirely different additions to that of proposed in the first Show Cause Notice dated 25/02/2024. The details of the proposed addition mentioned in the second show cause notice dated 13/03/2024 are as under:-

<i>S. No.</i>	<i>Particulars</i>	<i>Amount</i>
1	<i>Addition on account of Loan</i>	<i>22,00,000</i>
2	<i>Addition on account of alleged excess purchase in respect of 9 parties</i>	<i>9,64,27,451</i>
3	<i>Addition on account of purchase from 10 parties which were allegedly not in the list of sundry creditors.</i>	<i>3,44,55,109</i>

9. The Assessee filed reply to the second Show Cause Notice on 16/03/2024 explaining that, none of the proposed addition are required as there were neither any discrepancy in any of the purchase party nor the proposed addition of loan was warranted. The Assessee also submitted explanation in respect of each and every party which was mentioned in the show cause notice dated 13/03/2024. The copy of the reply submitted by the Assessee along with the acknowledgement for the reply are produced at Page No. 19 to 27 of the Paper Book. It is pertinent to note that, after the receipt of the above reply dated 16/03/2024, the A.O. did not acted upon the second Show Cause Notice dated 13/03/2024 and no addition has been made on the basis of the said show cause notice.

10. The A.O. issued one more show cause notice on 20/03/2024, wherein the Ld. A.O. proposed to reject the books of account of the Assessee and to compute the income by estimating the profit at Rs.

13,36,41,970/- being 10% of the turnover. It is observed that in response to earlier show cause notices issued by the Assessing Officer, the Assessee had given specific explanation in respect of each of the parties which were mentioned in the show cause notice and the explanation submitted by the Assessee has not been disputed or rebutted by the A.O. However, the A.O. estimated the income of the Assessee by rejecting the books of accounts. The reason for rejecting the books of account has been mentioned in Para 4.3.5 of the show cause notice dated 20/03/2024 which reads as under:-

*“4.3.5 Further, the assessee has failed to submit any documents in support of stock or stock register. However, where a stock register, cash memos, etc., coupled with other factors like vouchers in support of the expenses and purchases made are not forthcoming, it may give rise to a legitimate inference that all is not well with the books and the same cannot be relied upon to assess the income, profits or gains of an assessee.”*

11. The Hon'ble jurisdiction Delhi High Court in the case of CIT vs. Poonam Rani (2010) 5 Taxmann.com 76 held that in the absence of any material pointing towards falsehood of accounts books, addition of gross profit and rejection of books of accounts cannot be made.

12. The Hon'ble jurisdictional Delhi High court in the case of CIT v Paradise Holidays(2010) 325 ITR 13 (Delhi) held as under:-

*6. The Assessing Officer has not pointed out any specific defect or discrepancy in the Account Books maintained by the assessee. Admittedly, the assessee had been maintaining regular Books of Accounts, which were duly audited by an independent Chartered Accountant. As noted by CIT(A), the financial results were fully supported by the assessee with vouchers and the Books of Account were complete and correct in all respects. The accounts which are regularly maintained in the course of business and are duly audited, free from any qualification by the auditors, should normally be taken as correct unless there are adequate reasons to indicate that they are incorrect or unreliable. The onus is upon the Revenue to show that either the Books of Accounts maintained by the assessee were incorrect or incomplete or method of accounting adopted by him was such that true profits of the assessee cannot be deduced therefrom.*

13. The Hon'ble ITAT Delhi in the case of Bony Rubber Co. Pvt. Ltd. vs. ACIT vide ITA No. 4980/Del/2004 has held as under:

*"It is well settled that without rejecting the books of accounts maintained by the assessee by pointing out specific material defects therein, the results declared by the assessee on the basis of such books regularly maintained cannot be disturbed and it is not permissible for the AO to make the trading addition merely because the GP rate shown by the assessee is lower than that of earlier years without complying with the requirements of the provisions of sec. 145".*

14. In the case of Sard Metal Engineers Vs. Addl. CIT vide ITA No. 435/Del/2003, it was held that in the absence of any specific finding, rejecting the books of accounts or invoking the provisions of sec. 145 of the Act, the trading addition made by applying a higher GP rate is not

justified as has been held by the Hon'ble Patna High Court in the case of CIT vs. Mohd. Umer reported in 101 ITR 525.

15. It is seen from the record that the stock register was duly submitted by the Assessee on 05/11/2024 itself which has been acknowledged by the A.O. in Page No. 4 of the Assessment Order. Further it is also found that at no point of time A.O. asked for copy of any purchase or sale bills. However, the Assessee vide reply dated 10/03/2024, even submitted the copy of invoices, copy of e-way bills etc. to the A.O. in respect of the purchase parties for which additions were proposed by the A.O. in his show cause notice dated 25/02/2024. The said fact can be corroborated with Page No. 9 & 10 of the Paper Book. Though the A.O. never asked for copy of purchase and sales bills, the Assessee vide its reply dated 21/03/2024, submitted the copy of all purchase and sales bills which is evident from Page 63 of the paper book. The purchase and sales bills submitted by the Assessee including e-way bills which are also proof of transportation have been once again produced before us right from Page No. 165 to 4135 of the paper book.

16. The A.O. in its assessment order observed that the trade debtors are shown as Sundry Creditors and sales have been reflected as purchase and the sales figure are not matching with the ledger copy

submitted by the Assessee. It is found that the Assessee vide reply dated 21/03/2024, provided explanation in respect of each and every party which can be seen from pages 56 to 64 of the Paper Book. As per the Assessee, the A.O. had not appreciated the fact correctly. However, it is found that at no point of time the A.O. pointed out any discrepancy in the submission/explanation filed by the Assessee. During the assessment proceedings, A.O, never asked any query in respect of expenses except interest expenses. Assessee provided the details of interest expense along with the details/confirmation/documentary evidences of all the loans along with the TDS Certificate. After considering those documents, the A.O. made no addition in respect of any of the loans. However, gave finding in the assessment order that vouchers in respect of expenses were not forthcoming, which is contrary to the fact on record.

17. The Ld. A.O. has assigned one more reason for making the addition that some of the purchase parties were inactive on the GST Portal and not filed Income Tax Return. In our considered opinion, merely because some of the purchase parties are not having active GST Portal and some of them have not filed the Income Tax Return, that cannot be ground for making the addition in the hands of the Assessee. There is no legal

obligation upon the Assessee that before dealing with a third party the Assessee should ensure that those parties are making their tax compliances. If the purchase parties are not filing the Return, it is for the Department to take action against the purchase parties and not against the Assessee.

18. Further, A.O. assigned one more reason for making the addition that purchase parties have not responded to notice u/s 133(6) of the Act. The Hon'ble Bombay High Court in the case of CIT vs. Nikunj Exim Enterprises (2015) 372 ITR 619 held that the purchases cannot be disallowed merely on the ground of non-furnishing of response by the purchase parties. The said Judgment of High Court has also been affirmed/upheld by Hon'ble Apex Court. Further similar ratio has been laid down by the Jurisdictional High Court in the case of CIT vs. Odeon Builders Pvt. Ltd.-2017 (7) TMI 774 which has also been approved/affirmed by the Apex Court reported at (2019) 418 ITR 315 (SC).

19. Even during the first appellate proceedings, the Ld. CIT(A) mentioned that the Assessee has furnished e-way bills and invoices, however, observed that the Assessee has not furnished the bank accounts. The said observation of the Ld. CIT(A) is found to be

erroneous as the Assessee has submitted copy of all bank statements during the assessment proceedings itself, which has been mentioned by the A.O. in Para 4.2.1 of the Assessment Order. Apart from the same, the A.O. never given any reason of non-furnishing of the bank statement while making the addition. On the other hand, Ld. A.O. made the addition on the ground that sales bills were not furnished and transportation of purchase and sales were not furnished. Even the said reasoning is also factually incorrect and contradictory as the A.O. in Para 2.4.1, mentioned that copy of all purchase and sales bills were duly submitted by the Assessee. The Ld. CIT(A) has also mentioned that e-way bills and invoices were duly submitted by the Assessee.

20. The Ld. A.O. while applying rate of 10% profit, not given any comparables and by making vague remarks, without assigning any reason applied the percentage. It is worthwhile to observe that the GP rate of the assessee for the year under consideration (A.Y. 2022-23) is better than GP rate of immediately preceding year. The GP Rate for the year under consideration is 1.91%, whereas it was 1.78% during immediately preceding year i.e., A.Y. 2021-22. The case of the assessee for A.Y 2021-22 was also completed u/s 143(3) of the Act vide assessment order dated 29/12/2022 in which similar business and

books of accounts were accepted by the assessing officer. The assessing officer made a specific addition of Rs. 98,40,545/- in respect of one party which has been deleted by the Co-ordinate Bench of the Tribunal in ITA No. 4697/DEL/2024. Thus, the GP declared of 1.78% in last year i.e. A.Y. 2021-22 stands accepted. Thus, as observed earlier, the GP Rate for the year under consideration i.e., A.Y. 2022-23 is 1.91% which is better than last year. Therefore, there is no cogent reason for the authorities to apply the rate of profit by calculating @ 10% on the turnover for the year under consideration.

21. In the present case, the Assessee has submitted all the details and documentary evidence including the party wise details of purchase and sales, complete stock register, copy of all purchase and sales bills including e-way bills, ledger accounts and explanations in respect of each and every party for which doubt was raised by the A.O. which can be corroborated from the plethora of documents produced by the Assessee in the Paper Book. The A.O. has not pointed out any discrepancy in the documents submitted by the Assessee. The A.O. has not rebutted the explanation submitted by the Assessee. However, without their being any basis, the Ld. A.O. made the estimation of profit @10% on the sale of Rs. 1,33,64,19,742/-. Further, the account of the

Assessee are duly audited and the A.O. has not pointed out any defects in the books of accounts. The Ld. A.O., stated that it is not believable that the Assessee has carried on genuine purchase and sale and contrary to the same, the Ld. A.O. computed the income as business income by adopting the sales turnover declared by the Assessee. Thus, the approach of the A.O. in making the addition itself is contradictory and not sustainable in the eyes of law.

22. In view of the discussions made in the above paras, finding merit in the Grounds of Appeal of the Assessee, we delete the addition made by the A.O. which has been confirmed by the Ld. CIT(A) by allowing Grounds of Appeal of the Assessee.

23. In the result, Appeal of the Assessee is allowed.

**Order pronounced in the open court on 04<sup>th</sup> June, 2025**

**Sd/-  
(M. BALAGANESH)  
ACCOUNTANT MEMBER**

Date: 04.06.2025

R.N, Sr.P.S\*

**Copy forwarded to:**

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

**Sd/-  
(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**

