

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री राजपाल यादव, उपाध्यक्ष एवं श्री कृणवन्त सहाय, लेखा सदस्य
BEFORE: SHRI. RAJPAL YADAV, VP & SHRI. KRINWANT SAHAY, AM

आयकर अपील सं. / ITA No. 889/Chd/ 2024
निर्धारण वर्ष / Assessment Year : 2021-22

Gaurav Singhi Pragatie Steels, Near Sai Mandir Road, Nasrali, Gobindgarh, Punjab -147301	बनाम	The ITO Ward-2, Mandi Gobindgarh Punjab
स्थायी लेखा सं. / PAN NO: ALHPS6129G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

&

आयकर अपील सं. / ITA No. 955/Chd/ 2024
निर्धारण वर्ष / Assessment Year : 2021-22

The ITO Ward-2, Mandi Gobindgarh HQ Sirhind Punjab	बनाम	Gaurav Singhi Pragatie Steels, Near Sai Mandir Road, Nasrali, Gobindgarh, Punjab - 147301
स्थायी लेखा सं. / PAN NO: ALHPS6129G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Shri Manav Bansal, CIT, DR

सुनवाई की तारीख/Date of Hearing : 06/05/2025
उदघोषणा की तारीख/Date of Pronouncement : 07/07/2025

आदेश/Order

PER KRINWANT SAHAY, AM:

This is an appeal filed by the Assessee and Cross Appeal filed by the Department against the order of the Ld. CIT(A)/NFAC, Delhi dt. 18/07/2024 pertaining to Assessment Year 2021-22.

2. Since both the above appeals were heard together, therefore they are being disposed of by this consolidated order for the sake of convenience and brevity.

3. We will first deal with the appeal of the Assessee in ITA No. 889/Chd/2024 pertaining to Assessment Year 2021-22, wherein the assessee has raised following grounds:

"1. That the Ld. CIT(A) had erred in confirming the part addition of Rs. 1,32,34,287/- on estimated basis by applying a rate of 12.5% as profit entered in impugned purchases from certain parties.

2. a) That the Ld. CIT(A), NFAC, Delhi has erred in ignoring the documentary evidences of the genuine being purchases made by the assessee like Tax invoices of the parties, e-way bill, making of payment through banking channels, and all other evidences, which proves the genuineness of purchases made by the assessee.

2. b) That the Ld. CIT(A) has ignored the documentary evidence of the GST returns and confirmation of the same by GSTR-2A of the assessee without assigning any reasons.

3. That the sustaining of part addition is against the facts and circumstances of the case.

4. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."

4. The facts as gathered from the order of Ld. Assessing Officer and CIT(A) are that the assessee is the proprietor of Pragatie Steels. It is dealing in trading of different types of scrap. It had filed the return of income for the above said year on the basis of audited books of accounts, copy of which, has been placed before us in the Paper Book. The assessee is maintaining complete day to day stock tally in respect of different types of scrap, copy for which has been placed in Paper Book from pages 25 to 60.

5. The Assessing Officer noticed that some of the suppliers from whom, the purchases have been made had not filed their returns

of income. As per list of the parties, which have been reproduced at pages 6 to 7 of the assessment order, the Assessing Officer also issued notices u/s 133 (6) to some of the parties. In response to that, two parties namely Sh. Kapil Kidar Tirpude Prop. of Rama Traders replied that he did not have/had any dealings with Sh. Gaurav Singhi or with his establishment and similarly, Sh. Amit Arora Prop. of M/s Panna Enterprises denied having made any sales to Sh. Gaurav Singhi. The total purchases from these two parties amounted to Rs. 5,37,21,989/- as per page 8 of the assessment order. Further, it was noticed by the Assessing Officer that in respect of the parties listed at page 9 of the Assessment order, from whom the purchases were made during the year at Rs.5,39,57,562/-, some of the parties had not filed their returns of income and they have not given their e-mail id. They had made sale to the assessee. Thus, it was observed by the Assessing Officer that the genuineness of purchases from those parties is doubtful.

6. The assessee gave the detail of the parties from whom, the purchases have been made giving PAN Number, ledger copy of the suppliers in the books of accounts of the assessee and further stated that the payment have been made to those parties, through banking channels. Even mode of transportation, Lorry receipts, e-way bill have also been submitted. The reply of the Assessee has been quoted by the Assessing Officer at pages 11 to page 13 of the assessment order.

7. The Assessing Officer, thereafter, considering all the submissions as made by the assessee and the denial of the sales made by two parties, namely Sh. Kapil Kidar Tirpude and Sh. Amit

Arora, disallowed the entire purchases from Sh. Kapil Kidar and Sh. Amit Arora amounting to Rs. 5,37,21,989/-. On the other doubtful purchases of Rs. 5,21,52,513/-, disallowed the purchases @ 25%, which worked out to Rs. 1,30,38,078/- and, thus, made the total addition of Rs. 6,67,60,067/- to the returned income.

8. Before, the CIT(A), the assessee submitted detailed submissions that no sales could be made without the purchases and rejection of part purchases and accepting the total sales is against the facts and circumstances of the case. Further, it was argued that the purchases made from the parties were supported by purchase invoices, e-way bills, remittance of purchases were made through banking channels. The Assessee relied upon various case laws of the Hon'ble Apex Court and some of the High Courts as per pages 4 to 7 of the order of CIT(A). It was further argued that if suppliers had not appeared before the Assessing Officer, no adverse conclusion could be drawn against the assessee.

9. The Ld. CIT(A) after considering the submissions of the assessee held that the total purchases cannot be held to be bogus and the disallowance of entire purchases in respect of two parties merely on the basis of enquiries conducted u/s 133(6) cannot be held to be bogus. It was, however, held by him that the transactions are not verifiable as the purchases could not be subjected to verification. The correctness of the price for material purchased by the appellant cannot be accepted and it was held that either the purchase from the such parties are over invoiced or the purchases were actually made, not from the such parties from

whom it was claimed to have been made. It might have been purchased from the grey market without proper billings. Thus, under such circumstances, following some of the case laws, he held that only some of the purchases could be disallowed, where the corresponding sales are not doubted and after relying upon various case laws, the CIT(A) estimated the profit embedded in such purchases @ 12.5% and sustained the addition at Rs.1,32,34,287/- being 12.5% of Rs. 10,568,74,302/- (5,37,21,989/- + 5,21,52,313/-).

10. Before us, the Ld. Counsel argued that the following details in respect of 12 parties were filed as under:-

“ Copy of ledger account of parties in the books of accounts of the assessee.

- *Copy of relevant extract of bank statement of the assessee, highlighting the relevant purchase transaction with the above parties.*

- *Copies of invoices of the parties along with,“E-way Bills” evidencing the movement of goods, Bilty of transportation, Toll receipt, Kanda Parchi as well as ID proof of the driver and self-declaration in form of affidavit from the driver for No Tax Deduction.*

- *GST registration status of the above said parties on the GST Portal along with their HSN Code.*

11. It was further by way of Brief Synopsis submitted as under:-

i). All the payments to the alleged doubtful parties have been made through banking channels and no payment have been made in cash at all.

ii). The above documents also prove that the goods supplied by each of the above parties, have been used for trading purpose.

iii). It is also submitted that the GSTR-I, has been duly filed on GST portal by the suppliers for reporting its sales as stated clear from GSTR-2A.

iv). The GST Numbers of such parties are duly mentioned on all the purchase invoices.

v). The E-Way bill of the 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.”

12. It was further argued that complete stock tally in respect of purchases of different types of scrap have been maintained and copy of the same was submitted to us. The purchases as made from different parties have been sold and sales having not been doubted by the AO, no such defects or discrepancy have been pointed out by the AO, thus, no adverse view could be taken.

13. It was further stressed that as per GST department in respect of 8 parties, which had become in active, but the Assessing Officer has failed to appreciate that as on the date, when the purchases were made by the assessee, they had valid GST Number and e-way bill was generated, the sample copies have been filed and that e-way bill could be generated only, when the parties had valid GST Number as on the date of transaction.

14. It was further argued that all the invoices produced before the AO were duly depicted in the GSTR 2-A, which proves that the parties have filed their GSTR-1 and further argued that it is the standard format of GST department that when party file their GSTR-1 and gives the detail of sales, the sales automatically get reflected in Form GSTR-2A, from where, the supplier comes to know the details of that ITC paid by them and are reflected in their Form 2A. Reliance was placed by the assessee on the following case laws:-

a). *M/s. Prime Steel Industries Pvt. Ltd. Vs The DCIT Circle, Patiala in ITA No. 275/CHD/2024, where judgments 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 has been followed on similar facts and circumstances.*

b). Besides that following judgments of the Hon'ble Apex Court and of Jurisdictional High Court have been relied upon as under:-

i). CIT Vs Century Plyboards (I) Ltd., reported in [2019] 103 taxmann.com 179 (SC).

ii). CIT Vs Leaders Valves (P) Ltd., as reported in [2006] 285 ITR 435 (P&H)

iii). PCIT Vs TejuaRohit Kumar Kapadia, reported in [2018] 94 taxmann.com 325 (SC).

iv). M/s Supertech Forgings (India) Pvt. Ltd. Vs DCIT in ITA No.563/Asr/2018, dated 25.08.2021.

v). PCIT Vs Yog Oil Traders, reported in 153 taxmann.com 386 (Bom.HC), dated 05.07.2023

vi). Judgement of ITAT, Chandigarh Bench, Chandigarh in the case of Samrat Plywood Indus. In ITA No. 595/Chd/2017.

15. Proceeding further, the Ld. Counsel of the assessee argued that the books of accounts of the assessee have not been rejected and no defects have been pointed out, thus, when the books of accounts have not been rejected, no such addition could be made on account of purchases made from the parties. He relied upon following case laws:-

i). Judgment of Hon'ble Punjab & Haryana High Court in the case of Rajeev Aggarwal in ITA No. 35/2020 (O&M)

ii). Judgment of Hon'ble Delhi High Court in the case of Forum Sales (P.) Ltd. as reported in 160 Taxmann.com 93(Delhi)

iii). Judgment of the Hon'ble High Court of Gujarat in the case of Shakti Industries as reported in 36 taxmann.com 16 (Gujarat)

iv). Judgment of the Hon'ble High Court of Madras in the case of Marg Ltd. as reported in 84 taxmann.com 52 (Madras).

v). CIT vs. Anil Kumar & Co. in ITA No. 200001 & 200002 vide order dated 25.02.2016 (Karnataka HC)

vi). 315 ITR 185 (P&H) CIT vs. OM Overseas

- vii) 320 ITR 116 (All) CIT vs. Mascot India Tools & Forgings (P) Ltd.
- viii) 325 ITR 13 (Del) CIT vs. Paradise Holidays

16. It was further argued that the estimation @ 12.5% of the total purchases in respect of 8 parties totalling to Rs. 10,58,74,302/-, amounting to Rs., 1,32,34,287/- as made by the CIT(A) was bad in law. It was further argued that regarding 12.5% profit embedded in such purchases is also not correct, because the rates at which, the purchases were made by the assessee from the so called doubtful parties are same or less than the other regular parties and, thus, the whole basis of application of profit rate @ 12.5% by the CIT(A) is not in order.

17. Further, it was argued that merely that the parties did not respond to the notices u/s 133 (6) during assessment proceedings, no adverse view could be drawn as per the judgment of Hon'ble Apex Court in the case of Orissa Trading Corpn., reported in 159 ITR 78 (SC) and of the ITAT, Delhi Bench in the case of Karam Chand Rubber Industries in ITA No. 6599/Del/2014 as per copy placed before us. Thus, in nutshell, it was stated that the disallowance of Rs. 1,32,34,287/- as made by the CIT(A) is not in order.

18. The Ld. Departmental representative argued that the addition as made by the AO has substantially been reduced by the Ld. CIT(A), which is justified and since the suppliers did not respond to the notices u/s 133(6), thus, the genuineness of purchases made by the assessee are doubtful. It was also argued

before us that the GST Number of the parties have become in active and, as such, the purchases made by the assessee were doubtful and thus the Id. DR relied upon the finding of the CIT(A).

19. We have gone through the order of AO/CIT(A), Brief Synopsis, Paper Books and Judgement set as filed by the assessee's counsel. Facts as brought out above are not disputed by both the parties and it is also an undisputed fact that the assessee is maintaining day to day 'stock tally' in respect of different types of purchases of scrap and against such purchases, the corresponding sales have been made. Though, all the parties did not respond to the letters as issued by the Assessing Officer u/s 133(6) but it is a fact, that as on the date of purchases from such parties, they had valid GST Number and e-way bill have been generated on the supplies made to the assessee for which, copies of the ledger account of all parties, bank statement, evidencing the payment having been made, invoices along with E.way bill, bilty of transportation, Toll receipts, Kanda parchi, affidavit for consent of No-deduction of Tax, GST status have been filed. The said parties have duly filed their GSTR-1, and submitted the detail of the sales made by them along with GST Number of the parties to whom, they had made the sales and such sales have been reflected in Form GSTR-2A, from where, the suppliers come to know, tallies with the ITC paid by them, which is reflected in their Form 2-A. The Judgement of Hon'ble Calcutta High Court in the case of M/s LGW Industries Ltd. and Ors Vs Union of India &Ors., IN WPA No. 23512 of 2019 is quite relevant to the issue and following observation have been made in that judgment as under:-

“i) . 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.

ii). 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."

iii). . 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."

20. This Counsel has referred to the judgment of 'Prime Steel Industries' of Chandigarh Bench of the ITAT as cited above and also the judgment of 'Supreme Court' in the case of Century Plywood, Leader Valves Pvt. Ltd. of Punjab & Haryana High Court and that of the Apex Court in the case of 'TejuaRohit Kumar Kapadia', as cited supra have been relied upon. Under similar facts and circumstances, the judgment of 'Supertech Forgings (India) Ltd.' of Jurisdictional Punjab & Haryana High is quite relevant to the issue. Since the sales have not been doubted and neither there is inflation in the purchases and no defects have been found in day-to-day maintenance of stock records in the shape of stock tally, therefore, no addition could be made on

account of such so called bogus purchases. Further, we also find that the books of accounts of the assessee have not been rejected and under such circumstances, no such addition could be made in the hands of the assessee.

21. Regarding the profit embedded in purchases from such doubtful parties, we have considered the argument as presented by the assessee and also the facts as brought on by the CIT(A) in his order. We find that the rates of purchases from doubtful parties are in comparison well with the rates from the other parties and the finding in the case of M/s Prime Steel Inds., as cited 'Supra', is quite relevant and is being relied upon:-

"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 purchase) from such purchases.

30. Keeping in view these facts as well as various case laws brought on record by the Ld. 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."

Thus, these purchases having not been doubted, thus, the finding of the Ld.CIT(A) restricting the disallowance @ 12.5% for purchases from doubtful parties, cannot be sustained and, accordingly, the appeal of the assessee is allowed.

22. Now we shall deal with the Cross Appeal filed by the Department in ITA No ITA No. 955/Chd/ 2024 for the Assessment Year 2021-22, wherein the Department has raised the following grounds:

1. *That the order of the Ld. CIT(A), NFAC is bad in law and against the facts of the case.*
2. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in rejecting the applicability of the decision of the Hon'ble Apex Court in the case of N.K. Proteins Ltd. Vs DCIT(2017) 84 taxmann.com 195 (SC) on the issue of the bogus purchases.*
3. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in placing reliance on the judgement of Hon'ble Gujarat High Court in the case of Commissioner of Income Tax-1 Vs Bholanath Poly Fab (P) Ltd., ITA no. 63 of 2012 by only subjecting the profit embedded in the bogus purchase to taxation.*
4. *The appellant craves leave to add, amend or withdraw any ground of appeal before it is finally disposed.*

23. Since we have allowed the appeal of the Assessee after taking into consideration all the case laws cited by the Revenue in its grounds of appeal, we are of this considered view that mere no response from the parties to the AO's notice u/s 133(6) does not make them non-existent. Thus, purchases made from them cannot be rejected without bringing any proof on record. On the other hand, the Assessee has already brought on record all the relevant documents showing the purchases made from such parties. Even payment to that parties have been made through banking channel only. All relevant GST records, bilities, toll bills etc. have been provided by the Assessee and the Revenue has not

doubted them. The Assessing Officer and the Id. CIT(A) have accepted all such documentary evidences produced by the Assessee. In such situation, when the Revenue has accepted all such evidences, denial / rejection of purchases made from such parties are not justified. Thus, in our considered view, the appeal of the Revenue for rejection of some purchases made by the Assessee from such so-called non-existent parities cannot be sustained. Accordingly, Revenue's appeal is dismissed.

24. In the result, Revenue's appeal is dismissed and Assessee's appeal is allowed.

Order pronounced in the open Court on 07/ 07/2025

Sd/-

राजपाल यादव
(RAJPAL YADAV)
उपाध्यक्ष/VICE PRESIDENT

Sd/-

कृणवन्त सहाय
(KRINWANT SAHAY)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG/ RKK

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

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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar