

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'B' BENCH, LUCKNOW
BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.577/LKW/2018
A.Y. 2013-14

Dy. Commissioner of Income Tax- 6, 15/295A, 'Vaibhav Bhawan' Civil Lines, Kanpur-208001	vs.	Dee Control and Electric Pvt. Ltd., C-8, Udyog Kunj, Panki Kanpur-208022
		PAN: AABCD6695G
(Appellant)		(Respondent)

Assessee by:	Sh. B.P. Yadav, Adv
Revenue by:	Sh. Koushlendra Tiwari, Addl CIT DR
Date of hearing:	11.12.2025
Date of pronouncement:	25.02.2026

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the Revenue against the order of the Id. CIT(A)-2, Kanpur dated 28.05.2018, wherein the Id. CIT(A) has allowed the appeal of the assessee against the orders of the Assessing Officer under section 143 r.w.s. 144 of the Income Tax Act, dated 31.03.2016 for the A.Y. 2013-14. The grounds of appeal are as under:-

"01. That the Commissioner of Income Tax (Appeals) -II, Kanpur has erred in law as well as on facts and circumstances of the case in deleting the addition of Rs.4.23 crore made on account of bogus purchase, without appreciating the fact that the assessee could not produce any evidence in support of its claim that purchases were actually made from M/s DSC Ltd.

02 That the Commissioner of Income Tax(Appeals)-II, Kanpur has erred in law as well as on facts and circumstances of the case in deleting the addition of Rs.4.23 crore made on account of bogus purchase, without appreciating the fact that the assessee could not produce any evidence regarding actual receipt of machinery equipment.

03. That the Commissioner of Income Tax(Appeals)-II, Kanpur has erred in law as well as on facts and circumstances of the case in deleting the addition of Rs.4.23 crore made on account of bogus purchase, without appreciating the fact that the assessee could not produce any evidence regarding payment of transportation charges, payment of VAT etc. from which it could be inferred that actually, purchases were effected from M/s DSC Ltd.

04. That the order of the CIT(A) being erroneous in law and on facts needs to be vacated and the order of the Assessing Officer be restored.

05. That the Revenue craves leave to add or amend any one or more of the grounds of the appeal as stated above as and when need for doing so may arise."

2. The facts of the case are that during the F.Y. 2012-13, a search was conducted in the case of M/s DSC Ltd., group of cases and in consequence to the same, a survey was conducted of its subsidiary company M/s Lucknow Sitapur Express Way Ltd., at Village Digoji, Post-Indaurbag, Bakshi Ka Talab, Sitapur Road Lucknow. The survey team found that the said premises was in the possession of the assessee and therefore, the survey under section 133A was conducted on 28.08.2012 in the case of the assessee company and various documents were impounded. Subsequently, correspondence was exchanged with the AO of M/s DSC Ltd., who provided three copies of purchase deed between that assessee and M/s Dee Control Electrical P. Ltd. for purchase of equipment / machine on 3.07.2012 for Rs.48 Lacs, on 23.07.2012 for Rs. 1.25 Crores and on 3.08.2012 for Rs. 5.25 Crores. The assessee was confronted with these evidences and asked to explain these purchases. In response, it was submitted that payments of only Rs.4.23 Crores had been made during the year and a cheque of Rs. 2.75 Crores dated 16.08.2012 had not been encashed by the vendor as the quality of the equipment and machinery was of an inferior quality and a dispute had arisen with regard to the same. The assessee was asked to furnish copy of purchase bills of the said equipment alongwith the sales bills and details of the persons to whom these machineries had been sold, but it was submitted that M/s DSC Ltd., had not issued any sales invoice; the deliveries of items had been received as per the sale deeds; the machinery and equipment had been broken up into pieces for consumption as raw material as well as sale to Kabadi; all amounts of sales have been accounted for in account of contract work receipt; no sales had been incurred during F.Y. 2012-13 relevant to A.Y. 2013-14; copies of ledger accounts were enclosed. It was further clarified that no sales invoices had been issued by the assessee for such sales. The AO noted that the assessee did not have any purchase or sale bills but

had debited an amount of Rs. 4.23 Crores on account of these purchases in the profit and loss account. From the same, he concluded that the assessee was merely taking an entry of purchases from M/s DSC Ltd., and no actual machinery had been delivered. The AO came to this conclusion because she noted that the assessee had failed to produce any documents that it had received any machinery. No transportation costs had been borne by M/s DSC Ltd., and in the absence of any purchase bill, it could not be presumed that any machinery had been delivered. She noted that besides transportation charges, VAT was also payable in case of old machinery from outside the state of U.P., but no VAT had been deducted as observed from the ledger of M/s DSC Ltd.. The ld. AO therefore, added back a sum of Rs. 4.23 Crores paid to M/s DSC Ltd., holding the same to be a bogus purchase. The ld. AO also observed that the books of accounts of the assessee were neither complete nor correct and therefore, he asked the assessee to show cause as to why the assessment should not be completed on estimate basis by adopting a profit @ 2.35% on supplies of goods and contract work and @ 6.5% on contracts involved with a civil works were the major components. The assessee submitted that it had no objection to the assessment being made on such lines and accordingly the total income of the assessee was therefore, computed at Rs. 1.57,83,199/- on account of such estimation resulting in an addition of Rs. 49,40,359/- on this account. After adding back the allegedly bogus purchases, the assessee was assessed at Rs. 5,80,83,199/-.

3. Aggrieved with the said additions, the assessee went before the ld. CIT(A). Before the ld. CIT(A), it was submitted that the purchases of all items had been made from M/s DSC Ltd. through sale deeds executed by the said company and the assessee; that deliveries of machinery and its parts were made from the premises of its subsidiary company located at Lucknow and the expenses of transportation had been made by M/s DSC Ltd.; liabilities for payment of VAT were of M/s DSC Ltd., and the assessee was not responsible for the same; payments for the purchase had been made through cheques which had been found to be genuine; details of sale of such machineries and their utilization as raw materials by the assessee in

subsequent years had been furnished during the course of assessment proceedings and therefore, there was no reason to make the addition. The Id. CIT(A) noted that all the detail of sold machinery and its parts were submitted before the AO by the assessee. It was not clear as to why the AO had treated all the payments made by the assessee as not genuine and added Rs. 4.23 Crores as unexplained expenditure under section 69C, though the AO had held that these were bogus expenses to inflate expenses. The purchases were duly supported by sale agreements that had been seized during a search operation at the seller's premises so the AO could not hold that these transactions were not supported by any purchase bills or sales bills. The AO had accepted that the business of the assessee was to purchase old machinery and sell them as scrap. These purchases were duly debited in the profit and loss account. With regard to the transportation expenses, the Id. CIT(A) noted that the Id. AO had not made any enquiries from the seller M/s DSC Ltd., and in view of all these circumstances, he held that the AO had not been able to prove his case that these expenses were bogus. Accordingly, he deleted the additions made by the assessee.

4. The Department is aggrieved by the orders of the Id. CIT(A) and has accordingly come before us. Sh. Koushlendra Tiwari, CIT DR (hereinafter referred to as the DR) appearing on behalf of the Revenue pointed out that there were several indicators which showed that the purchases of machinery, on which expenses of Rs. 4.23 Crores were claimed, were not genuine. No VAT had been paid on such purchases, even though VAT was payable on old machinery purchase outside the state of Uttar Pradesh. There had been no transportation costs that had been incurred for the transportation of this machinery. In fact, there was no evidence to show the movement of the machinery. The Id. CIT DR pointed out that even purchase and sales invoices had not been raised for these transactions and therefore, even further sales could not be proved. He submitted that this debit of Rs. 4.23 Crores was therefore, just an entry which had been facilitated by M/s DSC Ltd,. The Id. CIT DR placed reliance on the decisions of the Hon'ble Supreme Court in the cases of N.K. Proteins vs. DCIT (2017)-TIOL-23-SC-IT. Accordingly, he

prayed that the Id. CIT(A) had acted without bringing sufficient evidence on record to justify the expenditure and therefore the additions made by the AO ought to be confirmed.

5. On the other hand, Sh. B.P. Yadav, Advocate (hereinafter referred to as the AR) pointed out that the machinery in question had not been brought from Delhi but was already present at the site at Sitapur. For this proposition, he drew our attention to page no. 133 to 134 of his paper books which contained an FIR filed by the Managing Director of the assessee company against Anil Agarwal S/o O.P. Agarwal, Taj Khan, Sonu Singh, Vidya Bhushan Tiwari and Santosh Kumar Singh and others dated 30.08.2013, in which it was submitted that the company had spent Rs. 5,25,00,000/- in purchasing machinery from M/s DSC Ltd., of Delhi and entered into agreement with a Kolkata based company for selling the same for Rs. 6,25,00,000/- odd. As per this agreement, the Kolkata based company deposited Rs. 1,15,00,000/- with the assessee out of which Rs. 1 Crore was kept by way of security. They were required to deposit one and half crore rupees more and only then could remove the material and if they could not deposit the money then the agreement would come to an end. However, the said company did not make the payment. Instead, Sh. Anil Agarwal and the other persons named in the FIR locked the persons of the assessee company into a room and throughout the night forcibly removed the goods from the premises upon threatening the persons of the assessee company with death. The assessee had lodged a complaint with the SHO, Bakshi Ka Talab and the SP, Rural but the FIR had not been registered. Accordingly, a prayer was made to the Hon'ble Allahabad High Court, Lucknow Bench on 30.08.2013 *vide* FIR No. 174/2013 dated 30.08.2013. The Id. AR also drew our attention to the order of the Deputy Collector, Sadar, Lucknow dated 2.09.2014 wherein, the Deputy Collector had recorded the fact that certain dues were outstanding against the salary of M/s DSC Ltd., amounting to Rs. 6,20,00,000/- plus 10% collection expenses and accordingly proceedings for seizure of the machinery available at the premises had been ordered. However, when the authorities went to seize the machinery, they found the premises to be in the control of the assessee

and the assessee had furnished evidences before the authorities that it had purchased the said machinery from M/s DSC Ltd., for a sum of Rs. 4.20 Crores. Being satisfied with these evidences that were furnished by the assessee on the basis of documents submitted before it, the Deputy Collector, Sadar had ordered the release of the machinery to the assessee, in view of the fact that they had been purchased by the assessee company before the date of the seizure. Accordingly, the Id. AR submitted that this order constituted evidence enough that the assessee had purchased the said machinery from M/s DSC Ltd; had been prohibited from parting with the machinery but the assessee had already concluded an agreement with the said seller on 23.07.2012 and it was in view of the fact that this agreement stood concluded before the date of prohibition, that the District Authorities had allowed the release of the machinery. In the circumstances, it was submitted that it could not be doubted that the assessee had actually purchased the machinery and therefore, the expenditure claimed on the same was fit to be disallowed. In response to these documents, the Id. CIT DR submitted that the documents required to be examined at the level of the AO and accordingly he prayed that the matter may be restored back to him.

6. We have duly considered the facts and circumstances of the case. We noticed from the documents furnished before us that it appears that the machineries which the assessee claims to have purchased from M/s DSC Ltd., on 13.07.2012, 23.07.2012 and 23.07.2012 were actually present at the site on 22.08.2012 when the same was seized by the Uttar Pradesh Government authorities and it was only after the assessee satisfied them that it had purchased this machinery from M/s DSC Ltd that an order releasing the same was passed on 2.09.2014. That being the case, the assessee has argued that the goods were located on site and it was also not required to pay VAT on such purchases or transportation costs and therefore, the purchase of the goods cannot be doubted on that account. We further note that at the time of the survey, the assessee was found to be in possession of the said plot and the details of purchases made by it were recovered from the AO of the seller, upon whose premises a search under

section 132 had been conducted. It is also observed that the assessee had entered into an agreement for the sale of the said machinery with Sh. Anil Agarwal, M.D. of Devesh Enterprises of Kolkata and the said party without making payment had forcibly removed certain goods from the assessee's premises in respect of which the assessee had filed a complaint with the police authorities in 2013 and subsequently also moved the Lucknow Bench of the Allahabad High Court when its complaint was not registered as an FIR. The contemporaneous evidence presented before us would therefore, suggest that goods were purchased and they were kept on site but it is not clear if this evidence was ever confronted to the AO or formed the basis of the decision of the ld. CIT(A). Our examination of the said documents shows inconsistencies in the figures taken by the assessee at various points of time and also that different explanations regarding transportation, sale and payment of VAT have been given on different occasions. In the facts and circumstances of the case, we deem it appropriate, that the matter be restored to the file of the AO for *de novo* assessment. The assessee may present these evidences before the ld. AO and the AO may re-examine the issues in this light.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 25.02.2026 in the Open Court.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED: 25/02/2026

sh

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.