

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

Before Sh. N. K. Saini, AM And Smt. Beena A Pillai, JM

ITA No. 669/Del/2013 : Asstt. Year : 2009-10

ITO, Ward 2(2), Ghaziabad.	Vs	Ray Steels, 12, Bihari Nagar, Navyug Market, Ghaziabad. AAKFR8283Q
(APPELLANT)		(RESPONDENT)

**Assessee by : Smt. Rasmita Jha, Sr. DR
Revenue by : Sh. Ajay Wadhwa, Adv.**

Date of Hearing : 07.12.2015	Date of Pronouncement : 19.01.2016
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ORDER

PER BEENA A PILLAI, JM:

The present appeal has been filed by the Revenue against the order of the ld. CIT(A)-Ghaziabad vide his order dated 23/11/2012 for A.Y. 2009-10 on the following grounds:

- 1. "That ld. CIT(A) has erred in deleting the addition of Rs. 2,38,86,670/- on the ground that the material in the possession of the Assessing Officer was neither supplied to the assessee nor was he confronted with the information. It is a fact that during the course of assessment proceedings point wise/question wise reply was submitted by the assessee on the material in the possession of the Assessing Officer.*

2. That ld. CIT(A) has erred in deleting the addition of Rs. 2,38,86,670/- on the basis of dictum that when the sales have been accepted, purchases have to be accepted also.
3. That the ld. CIT(A) has erred in deleting the addition of Rs. 2,38,86,670/- even when he himself has accepted that the possibility of appellant buying material from the parties other than M/s Riddhi Siddhi Enterprises cannot be ruled out.
4. That the ld. CIT(A) has erred in holding that Assessing Officer has not disturbed the trading results as disclosed by the assessee, ignoring the fact that the defects exposed and addition made do constitute disturbing the trading results.
5. Therefore, the order of the ld. CIT(A) be cancelled or set aside and the order of the Assessing Officer may be restored.
6. M/s Riddhi Siddhi Enterprise is shown as creditor of Rs. 16,44,662/- in the Balance sheet of the assessee firm. No separate addition of this amount was made as entire purchases from this firm was disallowed and added to the income of the firm. Since, the ld. CIT(A) has directed to apply net profit of 5% on Rs. 2,38,86,670/- the addition of Rs. 16,44,662/- needs to be made separately, as the creditor is BOGUS.
7. The plea of the telescoping is not applicable in this case as, violation of section 40A(3) was made in payment to M/s Kumar Agencies, while the extra profit earned from sham transaction with M/s Riddhi Siddhi Enterprises is a separate issue these are two separate persons and issues are also different from each other, therefore, telescoping should not be allowed.
8. The appellant craves leave to modify/amend or add any one or more grounds of appeals.”

2. Facts of the case in brief are that the assessee was engaged in the business of trading in iron & steel. The assessee filed its return of income on 30.09.2009 declaring income of Rs. 56,340/-. Later on, the case was selected for scrutiny. During the course of assessment proceedings the AO noticed that the assessee was having the total turnover of Rs. 7,57,68,073/- against net profit of Rs. 56,340/-. During the course of assessment proceedings u/s 143(3) of the Income Tax Act, 1961, in the case of M/s Riddhi Siddhi Enterprises with the Income Tax Officer, Ward 2(3), the proprietor of this concern Mr. Surendra Kumar Sharma has given statement that he has not made any sales/purchase. The AO pointed out that information was obtained from the office of Assistant Commissioner Commercial Tax, Ghaziabad who had informed that registration of M/s Riddhi Siddhi Enterprises has been cancelled, the purchases of M/s Riddhi Siddhi Enterprises were from non-existent/bogus firms and that the sales made by this concern should also be considered as bogus.

2.1. However, the AO was not satisfied from the submissions of the assessee and considered the amount of Rs. 2,38,86,670/- (which was the purchases made by the assessee from M/s Riddhi Siddhi Enterprises) as income of the assessee.

3. Being aggrieved the assessee carried the matter to the ld. CIT(A) and submitted that the assessee was not provided any opportunity to cross examine Sh. Surendra Kumar Sharma. It was submitted that the assessing officer had referred to certain judgments which are absolutely distinguishable in as much as these judgments pertain to the question of confirmation of the creditors and/or as the case may be though in the case of the assessee, the assessing officer has simply relied on the self serving statement of the third party namely Sh. Surendra Kumar Sharma.

3.1. It was submitted that the observations made in the order by assessing officer are totally based on the hear say. The Income Tax Officer, Ward-2(3), Ghaziabad has made an assessment on Sh. Surendra Kumar Sharma proprietor of M/s Riddhi Siddhi Enterprises and on the alleged information received from the Income Tax Officer, Ward-2(3), Ghaziabad, assessing officer has treated the purchase made by the assessee from the said Riddhi Siddhi Enterprises as bogus purchase. The assessee submitted that the important aspect of the matter has been lost sight of in as much as there is no evidence on record to prove correct, the contention of Sh. Surendra Kumar Sharma. The assessee submitted that there is no evidence on record to establish that what is stated by Sh. Surendra Kumar Sharma is in

fact not wrong. There is every possibility that in order to save his own skin, the said Sh. Surendra Kumar Sharma has given wrong statement.

3.2. It was further submitted that the finding and/or the observation made in the case of Sh. Surendra Kumar Sharma proprietor M/s Riddhi Siddhi Enterprises cannot be made basis to reject the accounted version of the assessee till an opportunity to cross examine Shri Surendra Kumar Sharma in regard to his statement is provided to assessee.

The reliance was placed on the following case laws:

- *CIT Vs Atma Prakash Batra 340 ITR 177 (Guj.)*
- *Dalpat Singh Choudhary Vs ACIT 65 DTR 148 (Jodh)*
- *State of Kerala Vs M.M.M Mathew and Another 42 STC 348 (SC)*

3.3. The assessee further submitted to the ld. CIT(A) that the observation of the assessing officer in regard to the purchases made from M/s Riddhi Siddhi Enterprises itself are based on wrong appreciation of facts and content of the statement of Sh. Surendra Kumar Sharma recorded under oath at the time of the hearing of the case. It was submitted that if the reply given by Sh. Surendra Kumar Sharma to the questions asked by the assessing officer is carefully examined, it would be seen that Sh. Surendra Kumar Sharma has no where admitted that he is involved in providing accommodation bills to the parties and/or

specifically to the assessee firm so to term the purchases made by the assessee as bogus.

4. The assessee also submitted as under:

“From the answer given by Sh. Surendra Kumar Sharma to question number 18 above, it would be seen that the so called Mr. Ravi had shown the godown to Sh. Surendra Kumar Sharma where the steel was stored. It goes to prove that M/s Riddhi Siddhi Enterprises engaged itself in the actual purchase/sale of material and that the assessee had purchased actual material from M/s Riddhi Siddhi Enterprises.

That from the statement of Sh. Surendra Kumar Sharma recorded under oath by the assessing officer, Ward-2(3), Ghaziabad it is not proved that Sh. Surendra Kumar Sharma is engaged in providing accommodation bills. Sh. Surendra Kumar Sharma has equally nowhere alleged in his statement under oath that material was not supplied to assessee. To every answer given by him in response to the questions of the assessing officer, he has simply stated that the so called Mr. Ravi was handling his business, got the bill/cheques signed from him.

The assessing officer has not examined the said Mr. Ravi and thus there is no material on record to conclude that Sh. Surendra Kumar Sharma proprietor M/s Riddhi Siddhi Enterprises has admitted to have issued accommodation bills to the assessee especially in the background of the fact that the name of the assessee namely Sh. Vijay Kumar Goel and his proprietorship concern apparently by the name of M/s Bankey Lal Jagdish Prasad is nowhere mentioned by the said Sh. Surendra Kumar Sharma in his statement recorded under oath. It is nothing less than a self serving statement that appears to

have been given just to avoid the tax liability in his own cases.

That Sh. Surendra Kumar Sharma has given an affidavit in which he has alleged that the assessing officer Ward-2(3), Ghaziabad forced him to sign the pre-prepared statement under threat and undue pressure. It is further stated that even without considering the content of affidavit, the assessing officer had no material at all to treat the purchases made by the assessee from M/s Riddhi Siddhi Enterprises as bogus purchases merely on the strength of the communication received from the Income Tax Officer, Ward 2(3), Ghaziabad, without giving an opportunity to the appellant to cross examine the party namely Sh. Surendra Kumar Sharma, Proprietor M/s Riddhi Siddhi Enterprises on the subject and/or to examine the so called Mr. Ravi so as to arrive at logical conclusion.

Since, Sh. Surendra Kumar Sharma has nowhere admitted to issue accommodation bills, the purchases made from Sh. Surendra Kumar Sharma proprietor M/s Riddhi Siddhi Enterprises cannot be termed as bogus and consequently, addition of Rs. 2,38,86,670/- being the total purchase price of the material is illegal and bad in the eyes of the law. The addition made by the assessing officer is unjustified and without proper material on record.

The purchase rate and sale rate of iron and steel purchased from Riddhi Siddhi Enterprises and also from other parties. It would be seen that the purchases from all the parties are at par irrespective of the fact that there are fluctuations in the prices over the period. The appellant has not earned any extra profit on the purchases made.

The ledger copy of M/s Riddhi Siddhi Enterprises from the books of the appellant is enclosed to prove that all the purchase transactions have taken place through banking channels only.

That the assessee has also enclosed the photocopy and ledger copy of various bank account maintained by the assessee which clearly prove that there are no cash deposits in the bank of the appellant and thus it is wrong to alleged that the cash withdrawn by M/s Riddhi Siddhi Enterprises found its way back to the coffers of the appellant.

In view of the submissions made above the addition has been made without sufficient material on record and thus the same deserves to be deleted. Appropriate relief may kindly be granted.”

4.1. The ld. CIT(A) called for the remand report from the AO, who furnished the same vide letter date 12.09.2012 which has been reproduced by the ld. CIT(A) in para 6 of the impugned order, the assessee also furnished a rejoinder vide letter dated 22.10.2012 which has been reproduced by the ld. CIT(A) in para 7 of the impugned order for the cost of repetition, the same are not reproduced herein. The ld. CIT(A) after considering the submissions of the assessee and the remand report of the AO observed that no independent enquiry had been made by the AO to form an opinion that M/s Riddhi Siddhi Enterprises had provided accommodation bills to the assessee in respect of the material purchased by it and his remand report was silent on this issue.

4.2. The ld. CIT(A) pointed out that Sh. Surendra Kumar Sharma had nowhere stated that he was into business of providing accommodation bills or that he had provided accommodation bills to the assessee in the material

purchased from him. The ld. CIT(A) observed that the AO had not pointed out any defects in the sales records and in the books of accounts. The ld. CIT(A) categorically stated that the AO had not commented upon the submission of the assessee on the total sales shown by him in the books of accounts. He also mentioned that withdrawals made by Sh. Surendra Kumar Sharma from his different bank accounts did not match with any of the deposits in the bank account of the assessee and there were mostly cheque clearing entries and no cash deposits.

4.3. The ld. CIT(A) mentioned that Sh. Surendra Kumar Sharma in his statement recorded under oath by Income Tax Officer, Ward 2(3), which was attached by the AO with the remand report, had nowhere stated that he issued accommodation bills to the parties including the assessee and that the AO had not conducted any independent enquiry to conclude that the actual material was not purchased by the assessee. The ld. CIT(A) observed that the information in possession of the AO, if any, was never confronted to the assessee except that a query was raised on 21.12.2011 but copies of the material was not provided to the assessee. He also observed that the allegation of the AO that cheques were credited in the bank account of M/s Riddhi Siddhi Enterprises and the cash was withdrawn on the same date did not conclusively establish that the assessee did not make any purchase.

4.4. The ld. CIT(A) observed that sales had been accepted and the AO had not expressed any doubt over the sales made by the assessee. The ld. CIT(A) further observed that looking to the facts and surrounding circumstances of the case the possibility of buying the said material from the parties other than M/s Riddhi Siddhi Enterprises could not be completely ruled out specially in the background of the fact that no doubt was expressed by the assessee on the quantum of the material sold. The ld. CIT(A) was of the view that the material might have been purchased by the assessee from the parties other than Riddhi Siddhi Enterprises probably to save some local taxes etc. and at best could be treated as unverifiable purchases inviting some better margin of profit.

4.5. The ld. CIT(A) held that the AO was not justified to make the addition of the entire cost of material to the income of the assessee that would result into unimaginable profit in the business particularly when the sales had been accepted purchases also have to be accepted. The ld. CIT(A) observed that the AO had not disturbed the trading results as disclosed by the assessee and the payment for the purchase of material had been made through banking channel, similarly, the payment for the sale of the material had been received through proper banking channel and there was no material on record that the assessee paid his money in cash for issuing cheque in his name and that

there was no effective cash deposit in the bank account of the assessee.

4.6. The ld.CIT(A) accordingly deleted the addition of Rs. 2,38,86,670/- made by the AO and in view of the inference that the assessee might have made impugned purchases from some other parties at a lower cost, and thus earned much better profit on the sale of the impugned purchases, he directed the AO to apply net profit rate of 5% on the said unverifiable purchases of Rs. 2,38,86,670/- which was worked out at Rs. 11,94,334/-. Accordingly the addition to that extent was sustained.

5. The ld. DR strongly supported the order of the AO and reiterated the observations made in the assessment order. It was further stated that the ld. CIT(A) was not justified in deleting the addition made by the AO.

4.1. The ld. AR in his rival submissions reiterated that the AO made the addition only on the basis of statement of Sh. Surendra Kumar Sharma which was retracted later on by stating that no bogus entries were provided either to the assessee or any other person. It was further submitted that the sales shown by the assessee were accepted by the Trading Tax Department as well as by the AO and when the sales and the gross profit rate were accepted there was no reason to doubt the purchases. Therefore, the ld. CIT(A) was fully justified in deleting the arbitrary addition made

by the AO. As regards to the addition sustained by the ld. CIT(A), the ld. Counsel for the assessee submitted that the purchases of Rs. 2,38,86,670/- were included in the total purchases of the assessee and on the basis of those purchases only, the sales were made on which the assessee declared the gross profit which was progressive in comparison the earlier year so, there was no occasion to make the impugned addition. He accordingly prayed to delete the addition sustained by the ld. CIT(A).

6. We have considered the submissions of both the parties and carefully gone through the material available on the record. The ld.AR has placed his reliance on the order dated 17.06.2015 of this Tribunal in the case of ACIT vs. Vijay Kumar Goel in ITA no. 670/D/2013, for assessment year 2009-10 which has been placed on record before us. The Ld.AR further submits that the decision of this Tribunal in the case of Vijay Kumar Goel(supra) has been upheld by the Hon'ble Delhi High Court vide order dated 18.11.2015, in ITA no. 289 of 2015.

6.1 In the present case, it appears that the AO made the addition merely on the basis of statement of one Sh. Surendra Kumar Sharma, Proprietor of M/s Riddhi Siddhi Enterprises which was later on retracted and it was stated that he was not indulged in providing the entries to the assessee or to any other person.

6.2. It is accordingly to be seen, even when the observation of the assessing officer is considered to be correct, where from the stock is received by the assessee for onward sales, as recorded in the books of account. The assessing officer has not rejected the sales. The assessing officer has nowhere expressed any doubt over the sale of the material as reflected in the books of account and stock register. In such circumstances, going by the observation of the assessing officer, purchases made from Riddhi Siddhi Enterprises can at best be treated as unverifiable purchase. In such circumstances, the entire purchase value cannot be added to the income especially when no doubt is expressed on the sales and the stock register produced before the assessing officer, a reasonable rate can be applied.

6.3. The assessing officer has on the other hand added Rs./ 2,38,86,670/- being the entire amount of purchase value of the material to the income of the assessee. It is not legally correct to make addition of the entire purchase value to the income of the assessee when the same is unverifiable and books are rejected the only judicious method to frame assessment is to be apply a reasonable rate of profit on the total turnover. It is further stated that the assessing officer has not brought any material on record to prove that the money withdrawn by Sh. Surendra Kumar Sharma of M/s Riddhi Siddhi Enterprises

found its way back to the coffers of the assessee namely Sh. Vijay Kumar Goel. On the other hand it is fact on record that all the transactions are entered through proper banking channel and even there is no evidence on record to prove that the assessee had paid his money to the onward buyers of the material to issue cheque to the assessee. The assessing officer has not pointed out any defect in the books of account and/or heavy cash deposit in the bank account of the assessee to suggest that the money is received back in cash from M/s Riddhi Siddhi Enterprises.”

6.4. The AO did not provide any opportunity to the assessee to cross examine Sh. Surendra Kumar Sharma. In the present case, it is also noticed that the turnover of the assessee was accepted by the Trade Tax Department and it is not the case of the AO that proper books of accounts were not maintained by the assessee in regular course of business or the same method of accounting was not followed consistently. The ld. CIT(A) examined the bank accounts as well as books of accounts of the assessee and categorically stated that the purchases as well as the sales were through banking channel and there was no cash deposit in the bank account of the assessee.

6.5. In the present case, the AO has not pointed out any defects in the books of accounts, therefore, the ld. CIT(A) was fully justified in deleting the addition made by the AO

on account of alleged bogus purchases particularly when the GP rate declared by the assessee was progressive and was accepted by the AO. The observations made by the assessing officer when analyzed, it can be safely concluded that it is certainly not the case of assessing officer that what is stated by Sh. Surendra Kumar Sharma alone is absolutely correct and consequently, it cannot be used in the case of the assessee till it is established beyond doubt that what is stated by him is true and correct. Whatever findings are recorded in the case of Sh. Surendra Kumar Sharma, it is simply a reflection of his system of working, presentations and conduct which cannot be generalized and imported to the case of the assessee. The finding in the case of Riddhi Siddhi Enterprises is made considering his specific circumstances and condition of accounts produced.

6.6. We, therefore, by considering the totality of the facts as discussed herein above delete the addition sustained by the Id. CIT(A). Facts being identical to that of Vijay Kumar Goel(supra), we are inclined to follow the decision of this Tribunal, which has been upheld by the Hon'ble Delhi High Court in Vijay Kumar Goel's (supra).

6.7. Ground nos. 1 to 6 of the department's appeal are, thus allowed.

Ground no. 7:

7. It is seen that this ground does not arise from the order of the 1d.CIT(A). The same is therefore dismissed.

8. In the result, the appeal of the Department is dismissed.

Order Pronounced in the Court on 19.01.2016

Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER
Dated: 19.01.2016

*Kavita Arora, P.S.

Sd/-
(BEENA A PILLAI)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR

		Date	
1.	Draft dictated on	09.12.15/14.12.15	PS
2.	Draft placed before author	14.12.15	PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS		PS/PS
6.	Kept for pronouncement on	19.1.2016	PS
7.	File sent to the Bench Clerk	20.1.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		