

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**I.T.A No.4642/Del/2019
(ASSESSMENT YEAR 2009-10)**

Sh. Raman Sood 38, Khemchand Market, Khanpur, New Delhi-110 062. PAN-AREPS 4176J (Appellant)	Vs.	Income Tax Officer, Ward-28(4), New Delhi. (Respondent)
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Appellant By	Sh. S.K. Gupta, CA
Respondent by	Sh. Sandeep Kumar, Sr. DR
Date of Hearing	23.12.2020
Date of Pronouncement	18.03.2021

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the assessee against order dated 08.03.2019 passed by the Ld. Commissioner of Income Tax (Appeals)-33, New Delhi {CIT(A)} for Assessment Year 2009-10.

2.0 The brief facts of the case are that the assessee is engaged in the business of trading of Steel Plates etc. The return of income was filed declaring a total income of Rs.2,19,175/- on 30.09.2009. On receipt of information from the office of Assistant Director of Income Tax (Inv.-II), Faridabad, regarding the assessee having received accommodation entry of alleged bogus purchase, notice u/s 148 of the Income Tax Act, 1961 (hereinafter called the 'the Act') was issued on 30.03.2016. Subsequently, the assessment was completed at an income of Rs.2,54,37,940/- u/s 147 r.w.s 143(3) of the Act after making an addition of Rs.2,52,18,773/- on account of alleged bogus purchase.

2.1 The assessee approached the Ld. First Appellate Authority challenging the reopening of assessment as well as challenging the addition on merits of the case.

2.2 The Ld. First Appellate Authority, however, upheld the initiation of re-assessment proceedings and also upheld the addition on merits.

2.3 Aggrieved, the assessee has now approached this Tribunal and has challenged the order of the Ld. First Appellate Authority by raising the following grounds of appeal:

“1. That the order passed by the Ld. CIT(A) is bad in law and nature and liable to be quashed because:

(a) The very basis of issue of notice under section 147 and assuming jurisdiction by the AO is erroneous, as while assuming jurisdiction for reopening the ld. AO has recorded the reasons that the Assessee has not filed his return of income for the year, therefore, the assessee has escaped income of Rs.2,48,99,600/-. Whereas, the assessee had already filed his return of income for the AY vide ack. no.011771 on 21.12.2016 declaring income of Rs.2,19,175/-.

(b) That the ld. CIT(A) failed to appreciate the fact that the reasons for reopening of assessment by the ld. AO are based on the borrowed satisfaction and that there is no application of independent mind by the PCIT in granting approval for reopening.

(c) That the ld. CIT(A) failed to appreciate the fact that the AO has not disposed of the objection so raised by the assessee in the spirit of law.

(d) That the ld. CIT(A) failed to appreciate the fact that the submission of the copy of VAT returns Filed for the year,

whereby the names of parties from whom purchases were made is appearing, and that there is no name of the party M/s Maa Durga Trading company, the alleged party in the year under assessment, Also, the details of the names of the parties from whom the purchases were made during the year were given, showing that no purchases were made from the alleged party, were totally ignored. Even the Reference by the ld. CIT(A) of GKN Driveshaft India Ltd. Vs ITO & Orss. (2003) 259 ITR 19 (SC) that the AO has followed the procedure is erroneous, in as much as the rejection of the objection of assessee that no purchase from the alleged parties were made, was disposed of by him, without giving any cogent reason as how the VAT Returns are unauthentic and unreliable.

2. That the ld. CIT(A) has grossly erred in confirming the addition made on account of Bogus Purchase amounting to Rs.2,52,18 773/- made from alleged parties in the previous year. The proof of VAT returns with the name of the parties, details of the purchases made were ignored and the additions were confirmed merely on whims, because:

(a) That during the preceding to previous year, the purchases were made from the alleged party. The purchase in that year has been accepted by the department. The results of that year has been accepted by the department, how the

purchase, that has been made in the preceding to previous year not relevant to the assessment year can be added in this year.

(b) That the ld. CIT(A) has not considered the fact, when the Quantitative Tally of the Purchase, Sale, Opening Stock and Closing Stock is correct, how the Purchase from the alleged party can be Bogus.

3. That without prejudice to the above grounds of appeal, the ld. AO as well as ld. CIT(A) has grossly erred in disallowing the whole of the alleged purchase and holding the same as bogus.

4. The appellant craves leave for addition, modification, alteration, amendment, deletion of any of the grounds of appeal.”

3.0 The Ld. Authorized Representative (AR) drew our attention to the reasons recorded for reopening as contained in the Assessment Order. The reasons are being reproduced herein under for a ready reference:

“A letter F.No. JCIT/Range- 28/2015-16 dated 23.03.2016 forwarding herewith the letter of F.No.ADIIT/INV-II/FBD./2015-16/4525 dated 21.03.2016 received from O/o Asstt. Director of Income Tax (Inv.-II), Faridabad regarding sharing of information with regard to accommodation entry of bogus purchase obtained by M/s

Rama Enterprises Prop. Sh. Raman Sood(PAN-AREPS4176J) from Sh. Vinod Goyal through his proprietary concern i.e. M/s Maa Durga Trading Company.

In this regard, it is submitted that Sh. Vinod Goyal prop, of M/s Maa Durga Trading Company given statement u/s 131(1) of Income Tax Act, that he had provided accommodation entries through bogus billing against which no goods were supplied by his company to the different parties. His company M/s Maa Durga Trading Company received e payment through cheques against the bills issued and then they withdrew the cash and arcer deducting the commission, remaining cash was given to the same party from which tney received cheque against bogus bills. There was no selling/ supply of goods of these parties.

Sh. Raman Sood prop, of M/s Rama Enterprises, was one of the party w'hich he provided accommodation entries though bogus billing against which no goods were supplied by M/s Maa Durga Trading Company. Sh. Raman Sood prop, of M/s Rama Enterprises gave cheques to Vinod Goyal prop, of M/s Maa Durga Company which he deposited in his banks namely Kotatk Mahindra Bank, Sector-16, Faridabad and Axis Bank, Faridabad in following manner in F.Y. 2008-09 against the bogus purchases.

S.N	Date	Mode of Payment Cash/Cheque	Amount in Rs.
1.	22.10.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 40,000/-
2.	14.11.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 2,30,000/-
3.	15.11.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 1,25,000/-
4.	18.11.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 1,10,000/-
5.	18.11.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 1,75,000/-
6.	18.11.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 1,90,000/-
7.	24.11.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 50,000/-
8.	24.11.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 1,80,000/-
9.	24.11.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 2,10,000/-
10.	08.12.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 2,25,000/-
11.	08.12.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 1,50,000/-
12.	12.12.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 1,60,000/-
13.	12.12.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 1,50,000/-
14.	18.12.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 2,85,000/-
15.	19.12.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 2,20,000/-
16.	23.12.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 3,10,000/-
17.	27.12.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 1,05,000/-
18.	30.12.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 1,20,000/-
19.	30.12.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 4,95,000/-
20.	30.12.2008	Cheque deposited in Kotak Mahindra Bank	Rs. 5,00,000/-
21.	02.01.2009	Cheque deposited in Kotak Mahindra Bank	Rs. 1,60,000/-
22.	03.01.2009	Cheque deposited in Kotak Mahindra Bank	Rs. 4,00,000/-
23.	06.01.2009	Cheque deposited in Kotak Mahindra Bank	Rs. 1,00,000/-
24.	14.01.2009	Cheque deposited in Kotak Mahindra Bank	Rs. 65,000/-
25.	30.01.2009	FTD from 286.200.1917 to 286.201.88	Rs. 7,50,000/-
26.	03.02.2009	FTD from 286.200.1917 to 286.201.88	Rs. 3,95,000/-
27.	05.02.2009	FTD from 286.200.1917 to 286.201.88	Rs. 10,20,000/-
28.	07.02.2009	FTD from 286.200.1917 to 286.201.88	Rs. 6,45,000/-
29.	10.02.2009	FTD from 286.200.1917 to 286.201.88	Rs. 9,90,000/-
30.	11.02.2009	FTD from 286.200.1917 to 286.201.88	Rs. 9,90,000/-
31.	11.02.2009	FTD from 286.200.1917 to 286.201.88	Rs. 12,60,000/-
32.	12.02.2009	FTD from 286.200.1917 to 286.201.88	Rs. 9,90,000/-
33.	13.02.2009	FTD from 286.200.1917 to 286.201.88	Rs. 12,25,000/-
34.	18.02.2009	FTD from 286.200.1917 to 286.201.88	Rs. 8,55,000/-
35.	18.02.2009	FTD from 286.200.1917 to 286.201.88	Rs. 8,10,800/-
36.	09.02.2009	FTD from 286.200.1917 to 286.201.88	Rs. 8,00,000/-
37.	24.02.2009	FTD from 286.200.1917 to 286.201.88	Rs. 8,00,000/-
38.	25.02.2009	FTD from 286.200.1917 to 286.201.88	Rs. 9,90,000/-
39.	26.02.2009	FTD from 286.200.1917 to 286.201.88	Rs. 4,68,800/-
40.	09.03.2009	FTD from 286.200.1917 to 286.201.88 -	Rs. 10,05,000/-
41.	17.03.2009	FTD from 286.200.1917 to 286.201.88 -	Rs. 7,00,000/-
42.	19.03.2009	FTD from 286.200.1917 to 286.201.88	Rs. 1,25,000 /-
43.	19.3.2009	FTD from 286.200.1917 to 286.201.88 all are from Kodak Mahindra Bank	Rs. 7,00,000/-
44.	07.04.2008	Axis Bank	Rs. 6,00,000/-

45.	07.04.2008	Axis Bank	Rs. 3,00,000/-
46.	04.04.2008	Axis Bank	Rs. 4,00,000/-
47.	04.04.2008	Axis Bank	Rs. 4,00,000/-
48.	04.04.2008	Axis Bank	Rs. 3,00,000/-
49.	15.04,2008	Axis Bank	Rs. 1,25,000/-
50.	17.04.2008	Axis Bank	Rs. 3,60,000/-
51.	21.04.2008	Axis Bank	Rs. 11,60,000/-
52.	24.04.2008	Axis Bank	Rs. 2,50,000/-
53.	24.04.2008	Axis Bank	Rs. 1,30,000/-
54.	30.04.2008	Axis Bank	Rs. 2,50,000/-
55.	14.05,2008	Axis Bank	Rs. 3,50,000/-
		Total	Rs.2,48,99,600/-

Since the assessee had drawn above mentioned cheques to M/s Maa Durga Company of Rs.2,48,99,600/- and Maa Durga Trading Company deposited the same in Kotal Mahindra and Axis Bank. Thus, Sh. Raman Sood prop of M/s Rama Enterprises had escaped income of Rs.2,48,99,600 for bogus purchasing”

3.1 The Ld. AR submitted that the reopening was bad in law because the Assessing Officer has mentioned in Page 6 of the Assessment Order that the assessee had not filed his return of income for the year under consideration. It was submitted that, apparently, the Assessing Officer had not seen the primary material which was before him. It was submitted that since the assessee had filed his return of income but the Assessing Officer had not taken note of it, it was a clear case of non-application of mind by the Assessing Officer and, therefore, the initiation of re-assessment

proceedings was bad in law. The Ld. AR further submitted that after the reasons having been supplied to the assessee, the assessee had raised objections to the reopening vide letter dated 26.12.2016 submitting that the reasons recorded were not correct in as much as the assessee had not made any purchase from M/s Maa Durga Trading Company during the assessment year under consideration and, therefore, the reopening, which was initiated on the ground of alleged bogus purchase was not maintainable. The Ld. AR also submitted that the copies of VAT returns filed by the assessee for the assessment year under consideration had also been furnished before the Assessing Officer wherein the details of party-wise purchases were stated and even in the VAT returns the name of M/s Maa Durga Trading Company was not appearing. He drew our attention to the copies of VAT returns and also copy of the ledger account of M/s Maa Durga Trading Company placed in the Paper Book and our attention was drawn to the fact that the said ledger account only contained opening balance and debits pertaining to payments made to M/s Maa Durga Trading Company during the year under consideration and that there were no purchases from

the said company in the relevant year. It was also submitted that apparently these aspects were ignored by the Lower Authorities, although the same had been brought to their notice. The Ld. AR also placed reliance on numerous judicial precedents to support his contention that the reopening was bad in law.

4.0 Per contra, the Ld. Sr. Departmental Representative (DR) placed reliance on the concurrent findings of both the Lower Authorities and submitted that the Department had acted on the basis of information received from the Investigation Wing regarding the assessee being one of the parties benefiting from accommodation entries relating to bogus purchases and, therefore, the reopening was within the four corners of law. The Ld. Sr. DR also submitted that the assessee could not substantiate the claim of no purchases having been made from M/s Maa Durga Trading Company during the year under consideration as no books of account were produced. The Ld. Sr. DR also submitted that the assessee had awaited to raise the objections against issuance of notice u/s 148 of the Act only at the fag end of the limitation period and, therefore, the conduct of the assessee was not bonafide. It was

submitted that given the factual matrix of the case, the reopening was justified and so was the addition on merits.

5.0 We have heard the rival submissions and have also perused the material on record. It is undisputed that the re-assessment proceedings were initiated on receipt of certain information from the Investigation Wing of the Department that the assessee was beneficiary of certain accommodation entries pertaining to bogus purchases. The Assessing Officer has reproduced the table containing entries pertaining to payments made to M/s Maa Durga Trading Company amounting to Rs.2,48,99,600/- and has added the same to the income of the assessee on the ground that the said amounts pertained to purchases which were not actually received by the assessee in stock. On the other hand, it is the contention of the assessee that these entries pertained to payments made to M/s Maa Durga Trading Company against the opening balance standing to the party's credit and that no purchases had been made during the year under consideration from M/s Maa Durga Trading Company. This claim of the assessee is verifiable from the copy of ledger

account of M/s Maa Durga Trading Company which has been enclosed in the Paper Book filed by the assessee. This ledger account contains only debit entries depicting payments made to M/s Maa Durga Trading Company and there are no credits appearing in the said ledger account which could be depicting purchases made from this company. The assessee had submitted both, before the Assessing Officer as well as Ld. CIT(A), that he has not made any purchases from M/s Maa Durga Trading Company during the year under consideration. The assessee has submitted copies of VAT returns which contains party-wise break-up of purchases made by the assessee during the year under consideration before the Lower Authorities. However, these VAT returns were not considered to be proper evidence by the Lower Authorities on the ground that they were not certified by the VAT Authorities. The only reason for rejecting the contention of the assessee was that the assessee could not produce the books of account before the Lower Authorities. In our considered opinion this approach of the Lower Authorities is not correct in as much as it remains undisputed that the assessee had duly filed copies of

audited accounts at the time of filing of the return of income and so it cannot be inferred that the assessee did not maintain any books of account. Further the evidentiary value of the VAT returns cannot be simply be brushed aside specially when the same were brought to the notice of the Assessing Officer in the very first instance when the assessee was raising objections against the initiation of reassessment proceedings. Even the table produced by the Assessing Officer in his assessment order depicts only payments made to M/s Maa Durga Trading Company and there is no entry depicting purchases from the said company. In such a situation, on the factual matrix of the case it is our considered opinion that the reopening in the instant case was bad in law specially, when the error in the approach of the Assessing Officer in recording of reasons on account of alleged bogus purchases was brought to the notice of the Assessing Officer in the objections raised by the assessee against initiation of re-assessment proceedings. It is trite law that to acquire jurisdiction for reopening the assessment u/s 147 of the Act, the Assessing Officer must have reason to believe that income chargeable to tax has escaped assessment and such a

reason to believe should be based on tangible material having live nexus with the income escaping assessment. Information or material received from Investigation Wing or any other wing of the Department can constitute relevant material. However, based on such material, the Assessing Officer has to first apply his mind on the facts and assessment records of the assessee to prima facie reach a conclusion that there is some kind of link or nexus with such material or information which empowers him with the jurisdiction to reopen the case u/s 147 of the Act. In the instant case, although, there was information about the assessee having received benefit of accommodation entries relating to alleged bogus purchase, the assessee had demonstrated before the Assessing Officer with evidence that no purchases had been made by the assessee company from M/s Maa Durga Trading Company during the year under consideration and further that the amounts in the table reproduced by the Assessing Officer only depicted entries pertaining to payments made against outstanding opening balance of the said party. We also note that the Assessing Officer has noted in the re-assessment order that the assessee has not filed his

return of income, although, as per records, the return was filed on 30.09.2009. Thus, apparently, there was a mis-appreciation of the assessment record by the Assessing Officer. The Hon'ble Bombay High Court in the case of Ankita A. Chokesy vs. ITO and Ors. [2009] 411 ITR 207 (Bombay) has held that the conditions precedent for issuance of notice for reassessment is that the 'reasons to believe' that income has escaped assessment must be based on correct facts, notice based on wrong facts is without jurisdiction and has to be quashed. Similarly, the Delhi Bench of the Tribunal in the case of DCIT vs. M/s K.L.A. Foods (India) Ltd. in ITA No.2846/Del/2015, vide order dated 8th April, 2019, has held that the condition precedent for issuance of notice for reassessment is that 'reason to believe' that income has escaped assessment must be based on correct facts. Notice based on wrong facts is without jurisdiction and is liable to be quashed. The Hon'ble Delhi High Court in the case of PCIT vs. M/s SNG Developers Ltd., reported in 404 ITR 312 has held that condition precedent for issue of notice for reassessment is that the 'reason to believe' that income has escaped assessment must be based on correct facts. Notice based on wrong

facts is without jurisdiction and has to be quashed. This order of the Hon'ble Delhi High was challenged before the Hon'ble Apex Court and the Hon'ble Apex Court dismissed the Revenue's Special Leave Petition in SLP No.42379/2007 vide order dated 9th February, 2018. Since, in the instant case, although, the assessee has filed return of income, the Assessing Officer proceeding to reopen the assessment by mentioning that no voluntary return had been filed by the assessee and, thereafter, proceeded to reopen the assessment on wrong appreciation facts on record, in such a situation, we have no option but to quash the reassessment proceedings itself. Accordingly, relying on the above mentioned judicial precedents, we quash the re-assessment proceedings. Before parting we would also like to add that even on merits, the addition has no feet to stand on as the impugned addition has been made on account of alleged bogus purchases and the assessee has demonstrated with an ample evidences that there were no purchases from M/s Maa Durga Trading company during the year under consideration. The Assessing Officer has made a disallowance on account of those purchases which were not even

debited to the Profit & Loss Account during the year under consideration. Therefore, on merits also this addition cannot be sustained.

6.0 In the final result, the appeal of the assessee stands allowed.

Order pronounced on 18th March, 2021.

Sd/-

(G.S.PANNU)
VICE PRESIDENT

Dated:18/03/2021

PK/Ps

Copy forwarded to:

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

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI