

**In the Income-Tax Appellate Tribunal,
Amritsar Bench, Amritsar**

**Before : Shri Laliet Kumar, Judicial Member And
 Dr. Mitha Lal Meena, Accountant Member**

**ITA Nos.589/Asr/2014& C.O. 52/Asr/2016
Assessment Year2010-11**

ACIT, Amritsar (Appellant)	V.S.	M/s. Bishan Steel, Industries Top floor, Bishan House, Kamla Nagar Market Deori, Amritsar PAN: AAAFB9250F (Respondent)
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Appellant by	Sh. Charan Das, DR
Respondent by	Sh. Tarun Badal, Adv.

Date of Hearing	14.07.2021
Date of Pronouncement	24.08.2021

ORDER

Per Laliet Kumar, J.M.

The present appeal is being filed by the revenue feeling aggrieved by the order passed by the CIT (A) on the following grounds:-

Grounds of Appeal

In the case of M/s Bishan Steel Industries, B-641, Ranjit Avenue Amritsar A. Y. 2010-11 against order u/s 250(6) dated 13.08.2014 of the CIT(A) Amritsar in appeal No.

354/2013-14.

- 1) Whether worthy Commissioner of Income Tax (Appeal) has not erred in law in not taking cognizance of assessee's own admission that M/s Asian Tube Trading is a fictitious firm of his parent Firm Mis Na yak Steel.
- 2) Whether worthy Commissioner of Income Tax (Appeal) is right in ignoring the fact that the Mis Rupani Trading Co admits itself before the Sales Tax Department that it had been providing the accommodation entries to the parties and the never delivered any material to the parties.
- 3) Whether worthy Commissioner of Income Tax (Appeal) was right in ignoring the material facts of the case that there was difference in the quality and quantity of goods purchased and goods sold by the assessee which is contrary to the assessee's claim that he had directly sold the goods without taking delivery itself.
- 4) Appellant craves leave to amend or add any one or more grounds of appeal.

The assessee had also filed the Cross objection against the order passed by the CIT(A) whereby the CIT(A) had enhanced GP rate of the assessee at 25%.

1. At the outset, the Ld.DR, drawn our attention to the order passed by CIT(A), wherein he had decided as under:-

“The AO has not commented on those transactions of purchases where description of item, quantity of item, weightment slips, octorai slips are available and as such there is no discrepancy as per AO's own standards in this regard. the AO has treated all these transactions by same bat. The AO has presumed weightment slips are also fabricated and have been prepared to cover up the bogus purchases. This conclusion has been on the basis of fluctuation shown in the tare weight of the truck as mentioned in table 3 of the assessment order. It has already been discussed in this order that tare weight of truck may fluctuate in view of presence of driver/ cleaner/ truck tools/ spare tyres on the truck or off the ruck. Even AO has raised issue on the gross weight the vehicle as there is fluctuation in the gross weight (weight of the truck including weight of goods is called gross weight). Gross weight on the truck depends on the quantity of goods loaded on the truck and it can even be more than rated capacity of truck as truck may be over loaded and similarly it can be less than rated gross weight if truck is under loaded. **The AO has not carried out any inquiry by issuing summons or 133(6) notices to these weigh bridge companies and has simply stated that these are fabricated based on his presumptions.**

It was explained by the assessee counsel that M/ s. Asian Tube Trading, has not deposited sales tax on sales made by it to the assessee and several other parties to the tune of crores of rupees and when said party was caught by Sales Tax Authorities, it has stated that it has provided only accommodation entries to shrug off any claim of sales tax from it. As providing accommodation entry does not come under purview of Sales Tax Authorities. As assessee has paid VAT on his sales and has claimed credit of VAT payment included in his purchases, the Sales Tax Authorities have forced for payment of this remaining sales tax which was not paid by the M/s. Asian Tube Trading, Mumbai. It can

be seen from all the trading invoices issued by M/ s. Asian Tube Trading, Mumbai that all invoices have VAT TIN No., CST TIN No., fix Landline Telephone Number, and Mobile Number. In all Invoices they have charged VAT at the prevailing rate of 4% and it also carry invoices no. etc. Thus, M/ s. Asian Tube Trading, Mumbai has charged VAT on the transaction and has not paid to the Sales Tax Authorities due to which this issue has occurred.

I have seen stock register submitted by the assessee for vanous products dealt by the assessee and it is found that all the purchases made from M/ s. Asian Tube Trading, Mumbai have been sold to various parties in construction industries. There are certain purchases of items from M/s. Nyka Steels Pvt. Ltd., which is sister concern M/s. Asian Tube Trading, Mumbai and those purchases have been accepted by the AO. In one of the purchase orders, the assessee has written to M/s. Nyka Steels Pvt. Ltd that they can also supply materials from their sisters.

Asian Tube Trading, Mumbai subject to maintenance of same paint quality a+icn clearly proves that M/s. Asian Tube Trading, Mumbai was part of M/s. Nyka Steels Pvt. Ltd. In similar circumstances Jurisdictional High Court has held in the case of CIT vs. Leaders Valves Pvt. Ltd 285 ITR 435 that as consumption stood fully proved the existence of parties can not be denied. In this case it was also held that if purchases are treated as bogus it would be impossible to manufacture the goods shown to have been manufactured. Similarly in the present case it would be impossible to have such quantitative sale and profits in absence of such purchases.

The assessee has shown overall G.P. margm of 14.18%, whereas, the assessee has shown G.P. Margin of 18.14% on purchases/sale related to M/s. Asian

Tube Trading, (without VAT) which clearly demonstrate that assessee has made huge profit on these purchases which have been accepted by the AO also. No doubt, assessee was not able to provide all evidences related to these transactions such as weightment slips, OctoroiSlies& Freight payment invoices, however, some of such details were submitted even before the AO. Absence of such supporting details can not tilt the scale regarding presence of tax invoice bills, entry in stock register arid consequent sales of all these purchases, profit margin on these transactions, account payee payment of all these transactions and non providing of opportunity to the assessee to cross examine the above party. Octoroi payment will be applicable only in those cases where goods are coming from outside Mumbai limit and if goods are purchased locally then there will be no octoroi payment. Similarly, weightment slips will be available if purchase party insists on reweightment of the goods to verify weight of the product, in case it is not convinced with the weight mentioned in the sales invoice or if weight has not been verified at the time of loading of purchase material by buyer party. Weightment slips are not necessary The AO has acted merely on allegation & information of bogus purchases from above party but has not proved with any evidence, such as by cross examining M/s. Asian Tube Trading, Mumbai or investigating its bank account to find out cash re-payment trail of cheque payments etc.

The AO has not even issued 133(6) notice as issued in other cases or in earlier year of this assessee itself to verify genuineness of the transactions.

The AO has not provided any opportunity to the assessee to cross examine the above party regarding its allegation and further accepted vital evidences of purchase like corresponding sales/ profits, quantitative sale /purchase tally & stock register in this regard. Still in view of above discrepancies and considering that these purchases may have been made from some other parties

a maximum Gross Profit Margin as has been levied in the case of M/ s. Bishan Steel Industries, where similar issue with similar party was involved is being taken. Gross profit of margin is 25% is applied on these transactions as held by Gujrat High Court in the case of M/s. N.K. Proteins Ltd. to cover up any possible tax avoidance profit in the form of Sales Tax/ VAT/ Excise Tax etc. In view of above, addition of 9,89,574/is sustained and remaining addition is deleted “

2. Further Ld. DR had also drawn our attention to the order passed by the Assessing Officer, more particularly to the following paragraphs:-

“When the counsel of the assessee was asked why details of trucks are not available in bills he could not provide any answer. From the details of trucks for the purchase in the reply dated 21.01.2014 it was noted that mostly the truck number, MH43U2988 was used. Counsel was asked during the course of hearing, whose truck it was. He said may be it belonged to M/s Asian Tube Trading. Since it was surprising that same truck was used to deliver the items to the parties to whom items were sold by the assessee, counsel was asked how this surprising arrangement was made. Counsel. submitted that someone from assessee's firm went along with truck driver and ensured the delivery of items to the parties. However, on next date of hearing counsel retracted from this statement and said that truck belonged to assessee firm instead and it picked the items from M/s Asian Tube Trading and then delivered the same to the parties to whom they were sold. Clearly this is fabricated argument, made to cover up the bogus purchase.

To further enquire into the matter, letter u/s 133(6) was issued to the M/s Asian Tube trading on 27-01-2014. Postal authorities returned this letter with remark "left". It Clearly when this firm, M/s Asian Tube trading, was caught red handed, providing accommodation entries to the other parties, it closed its business premise and disappeared. Here one thing needs to be noted that proprietors of M/s Asian Tube Trading had accepted before the Sales tax department Mumbai, in the investigation of another case, M/s Best Scaffolding and steels, which is also under scrutiny for the same issue of bogus purchase, that they used to provide only false sales invoice. This is vital piece of information which cannot be ignored. This factor explains why this M/s Asian Tube Trading had left its business premise. Had it been doing genuine business then it wouldn't have left its business premise.”

“Further, the assessee in his reply dated 21.01.2014 himself came forward on the issue of bogus purchase which is reproduced below:

"In this case two party of purchase Mls Asian Tube Trading Company = 12330363 (Inclusive of VAT) from which total purchases made during the year, has retaliated with Mumbai sales-tax department to grab crores of rupees in sales tax. We have genuinely purchased the material from them at Mumbai branch & made the payment by cheque and issued purchase orders too. All the payments to the above party were made through account payee cheques only. In few cases copy of GR, Weightment slip, Octroi slip etc. is enclosed. The material purchased from Mls Asian Tube Trading of Company was sold to different parties from which the payment is also received through account payee cheques only. There are many other evidences on record, which prove genuineness of sales also. All evidences are firstly shown in the chart and then the evidences

are enclosed to make it a proper book &are endorsed at Page 266 to 493. Purchase orders are also enclosed at Page 494 to 696. The parent firm of Mls. Asian Tube Trading Company is Mls Nyka Steels Pvt. Ltd. and we used to purchase from them till the year 2012. i.e.: Till we came to know that they have made some fictitious firms to evade sales tax. So much so when we approached Mls. Nyka Steels Pvt. Ltd in the year 2012 in protest to deposit of sales tax on their behalf, after receiving the notice from the sales tax department indicating that our sales tax number shall be closed if we do not deposit the requisite amount and we were forced to deposit the same, then Mls Nyka Steels Pvt. Ltd requested us to adjust the sales tax paid by us on their behalf, out of amount due in the account of Mls Nyka Steels Pvt. Ltd. So much so we have filed a complaint with police u/s 4 20 etc. of IPC dated 14. 08.2013, copy of complaint letter with police is enclosed at page 697 to 700."

Through this submission assessee himself admitted that M/ s Asian Tube Trading had submitted before Mumbai Sales Department that it had been providing Parties and no goods was ever sold. Other argument of assessee like, assessee having GR, Weighing slip had already been exposed earlier, and thus, are baseless. Further it is to bring on record that no octroi slip had ever been produced before undersigned relating to purchase from M/ s Asian Tube Trading. Thus, this argument is misleading."

3. Based on the above order of the AO and CIT(A), it was contended by the Ld. DR that there is inherent contradiction in the finding recorded by the CIT(A) vis a vis assessment order , Firstly AO, had issued the notice under section 133 (6) to the M/s Asian

Tube Trading, Secondly assessee had admitted to have received bogus purchase/fictitious bills from said company and lastly assessee had deposited the sale tax to the VAT department, thereby acknowledging receipt of Bogus invoices/ bills . It was submitted, by DR, , while passing the order Ld. CIT(A) ignored the above said finding of fact recorded by the assessing officer and had wrongly passed the impugned order. DR, submitted, assessing officer had rightly adjudicated that the assessee received the bogus bills without actual receipt of the goods from the said Asian Tube trading and therefore the entire amount reflected in the bogus bills are required to be added to the income of the assessee.

4. On the other hand, the Ld.AR for the assessee had submitted that the due verifications were made by the CIT(A), therefore order passed by the CIT(A) is in accordance with law. The Ld AR, submitted, CIT(A) while passing the impugned order had himself verified from the stock register about the actual receipt of goods . Further it was submitted that once the assessing officer had admitted the sales of the assessee, then it is not open for the assessing officer to challenge the purchase made by the assessee. It was further submitted that the GP rate of 25% had wrongly been applied by Cit(A) , without any basis, as no defects

were pointed in the Books of account of the assessee, therefore CO of the assessee is required to be restored By holding GP at 18.14%

5. We have considered the rival contention of the parties and perused the material available on record, including the judgments cited at the bar during hearing by both parties. In the present case the CIT(A) has deleted the additions made by the assessing officer on the pretext that the assessing officer had not issued the notices under section 133(6) of the Act by summoning M/s Asian Tube Trading and verifying about the bogus bills issued by the said company. It was also the case of the CIT(A) that no opportunity of hearing was granted by the assessing officer to the assessee while relying upon the finding recorded in the case of the sister concern of M/s Asian Tube Trading, in the Sales Tax proceedings . In our considered opinion the above said to aspect have been wrongly considered by the CIT(A), as it is contrary to record .The assessing officer while passing the assessment order had issued the notices under section 133(6) to Asian tube trading , Mumbai however the notices sent were written undelivered on account of known was available at the premises to receive the notices.(***refer assessment order , supra***).Moreover in reply submitted to the AO, on 21 January 2014, assessee, had

admitted that bills issued by Asian tube trading were fictitious and the assessee had deposited the sale tax demand of M/s Asian Tube Trading with the department so that the demand against M/s Asian Tube Trading be not enforced and recovered from the assessee.(***refer assessment order , supra***). It was also the case of the assessee that the first information report was registered against the company on the complaint of the assessee.

6. In our considered opinion all the above said aspects were required to be examined and considered by the CIT(A) while passing the impugned order, however none were considered by CIT(A) and he had passed order in stereo type and criptic manner .As the order was passed by the CIT(A), in stereo type and criptic manner , after ignoring the important admitted facts regarding the issuing of notices under section 133(6) of the Act, admissions of assessee of paying the Sales tax on behalf of Asian Tube Trading, registration of FIR, etc therefore In our considered opinion , the matter is required to be remanded back to the file of CIT(A) to decide the grounds raised by the assessee, a freshfollowing law.
7. In the light of the above we set aside the order passed by the Commissioner and remand the matter to CIT (A). The CIT(A) is

directed to decide the Novo all the grounds raised by the assessee in the memo of appeal filed before him , after following the principle of natural justice and affording the opportunity of hearing to the assessee and to AO. Further we issue following directions to the CIT(A):-

- a. To issue notices to Asian Trading Tube Mumbai or to any other person , for deciding issues raised by the assessee i.e. whether the invoices raised by Asian Trading Tube were fictitious or not.
- b. To record the categorical finding of facts, after analyzing the evidence on record or any other evidence, which may be filed by the assessee, whether the assessee had received the goods from Asian Trading Tube.
- c. To consider the replies filed by the assessee before the assessing officer and FIR registered by the assessee against the said company with the Police and investigation if any carried out by the Police on the said FIR, of the assessee.
- d. To issue summon and examine the records from the sale tax department, Mumbai in the case of the Asian Trading Tube and its sister concern .

- e. Grant opportunity to the assessee, for filing any other documents/ evidence, which the assessee deem appropriate and necessary for adjudication of the lis, and sought a report from the AO on that,if the Assessee fills any such document.
8. As we are remanding back the entire matter to the CIT(A) file, we deem it appropriate not to adjudicate the other grounds raised by the revenue and assessee. Nothing stated hereinabove shall be considered as the finding of facts by the Tribunal. CIT(A) is directed to decide all the grounds raised by the assessee without being influenced by any of our observations.
9. In the result the appeal of the revenue as well as CO of the assessee are allowed for statistical purposes.

Sd/-

(Dr. Mitha Lal Meena)
Accountant Member

Sd/-

(Laliet Kumar)
Judicial member

Copy of order forwarded to:

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| (1) The appellant | (2) The respondent |
| (3) Commissioner | (4) CIT(A) |
| (5) Departmental Representative | (6) Guard File |

By order

Sr. Private Secretary

Income Tax Appellate Tribunal
Agra Bench, Agra