

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH: 'A', NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
(THROUGH VIDEO CONFERENCE)

ITA NO. 5034/DEL/2016

A.Y. : 2012-13

M/S BECON CONSTRUCTIONS PVT. LTD., B-2/5, PLOT NO. 2, ASHOK NAGAR, DB GUPTA ROAD, NEAR FAIZ CHOWK, KAROL BAGH, NEW DELHI – 110 005 (PAN: AACCB9387Q)	Vs	ACIT, CENTRAL CIRCLE-8, NEW DELHI
(Appellant)		(Respondent)

Assessee by	Sh. Shashwat Bajpai, Advocate
Department by	Sh. Satpal Gulati, CIT(DR)

ORDER**PER H.S. SIDHU, JM:**

This appeal filed by the Assessee against the Order of Ld. CIT(A)-24, New Delhi for Assessment Year 2012-13 dated 25.7.2016 wherein, the addition of Rs. 2,44,00,000/- made by the AO with respect to the closing stock was upheld.

2. The grounds of appeal by the Assessee are as under:-
 1. That on the facts and circumstances of the case the Ld. CIT(A) grossly erred in confirming the addition of Rs. 2.44 crores on the following facts-
 - a. Because the Ld. CIT(A) has rejected the claim of reduction of closing stock which has not been the subject matter of additions made by the AO therefore, the enhancement made by the Ld. CIT(A) is without any opportunity given to the assessee so it is liable to be deleted.
 - b. Because the Ld. CIT(A) has not given proper opportunities to the assessee of enhancing the claim of stock in hand thereby the requirements of section 251(2) of the Act has not been complied with.
 2. The appellant craves leave for addition, modification, alteration, amendment of any of the grounds of appeal.
3. The brief facts in the case shows that assessee is a Private Limited Company wherein search u/s. 132 of the Income Tax Act, 1961 (hereinafter referred as "Act") was conducted at K-Word Group of cases on 05.4.2012. The assessee was also party to that and therefore notice u/s. 153A of the Act was issued on 09.7.2014. The assessee submitted a

letter that its return filed on 28.11.2014 declaring total income of Rs. 19,76,480/- may be considered. Notice u/s. 143(2) of the Act was issued on 02.12.2014. During the course of search, it was found that the assessee has received certain contracts from PACL Ltd. as the genuineness of the execution of the contract was not proved @12% of the profit thereon i.e. amounting to Rs. 60 lacs was added to the total income of the assessee. However, the above issue is not in dispute. Now the Ld. CIT(A) has deleted the same. The real issue in dispute in this appeal is that from the documents found and seized, it was noted that the companies of the assessee group while making payment for purchases of raw material to various builders and used to receive cash and therefore, the purchases made by the Assessee to some extent was found to be bogus. During the course of assessment proceedings, it was found that assessee has made purchases of Rs. 2.44 crores from 3 different parties. The AO after considering the reply of the assessee from the seized documents found that the payments have been made by the assessee in cheque and cash is received back. Therefore, the AO held that assessee has claimed bogus purchases amounting to Rs. 2.44 crores. The same addition was also

made to the total income of the assessee and it was assessed with Rs. 3,23,76,480/- by the order u/s. 153A read with section 143(3) of the Act on 30.3.2015. The assessee is aggrieved with the above order and preferred the appeal before the Ld. CIT(A), who deleted the addition of Rs. 60 lacs, however, sustained the addition of Rs. 2.44 crores. Therefore, the assessee is in appeal on that ground.

3.1 The above issue has been dealt by the Ld. CIT(A) as per ground no. 3 of the appeal at paragraph no. 4.3 which read as under:-

"4.3 Ground NO. 3

4.3.1 This issue pertains to the disallowance on account of bogus expenditure. The appellant made written and oral submissions in this regard. The summary of these contentions is that:-

i) That the assessee company has suo-moto, by filing a revised return of income, adding back the amount of purchases in its computation of Income filed for the Original return filed u/s 139(1), as well as in the Revised return filed in response to notice u/s 153 A. This said fact was completely ignored by the Ld. AO while making assessment and making in

respect of bogus purchases. Thus, the purchases made during the year totaling to Rs. 3,24,00,000/- (including the above-said amount of purchases of Rs. 2,44,00,000/-) alongwith Opening Stock of Rs. 1,22,99,195/- with expenses capitalized has been shown as Closing Stock of Rs. 4,74,01,230/-. While making the computation of Income, the said amount of bogus purchases were added back to the Income of the assessee company and as corresponding reduction in the Closing Stock has been deducted from the income in the Computation of Income filed during the assessment proceedings but no cognizance thereof has been taken by the Ld. A.O., while making the assessment. Thus the addition on account of bogus purchases were made twice to the income of the assessee company, which is illegal and is liable to be deleted.

(ii) The submission of the assessee vide letter dated 16.03.2015 to the A.O. that the expenses in respect of the above purchases has not been claimed in the profit and loss account as the whole amount of purchases made during the year been added to the value of closing stock at the end of the year lying in the Balance Sheet of the assessee company for the captioned assessment year and further, the ledger account of 'GUPTA & CO. PURCHASE' is merely an internal report of a purchase agent, no any adverse

inference should be made against the assessee company, was ignored by the A.O.

4.3.2 I have considered the submissions of the appellant. Two things are very clear from the above discussion:-

(i) That the factum of bogus purchases by way of cheques and taking back cash by the appellant has been discovered during the search proceedings and therefore constitutes incriminating material found during the search.

ii) The factum of bogus purchases has also been admitted by the appellant, so much so that it has filed revised return of income in which it has added the bogus purchases to its profits.

4.3.3 However, it is noticed that even as the appellant has added back the bogus purchase, it has simultaneously made a reduction of the total income by the same amount of Rs. 2,44,00,000/- on the grounds that, due to purchases being written off, closing stock also stands reduced by the same amount. Thus, as per the appellant, the net impact on the total income, even after discovery of bogus purchases, is Nil. Therefore the issue that needs be examined is not whether purchases are bogus, but whether the appellant can be

allowed to reduce the total income on the grounds that closing stock also been has to be reduced. At the first blush, the arguments of the appellant sounds attractive, but on deeper examination of the actual facts and circumstances of the case, I am of the view that the claim has to be rejected. The closing stock can be reduced by the amount equal to the bogus purchases only if the appellant can establish that the closing stock valuation is as per a stock register in which the items purchased (whether bogus or otherwise) are entered. Obviously then, writing off purchases of certain items will also require deleting the identical items in the closing stock. For this purpose, a specific question was put to the appellant to produce its stock book. The A.R. of the appellant submitted that no stock book is maintained. Therefore, I have asked the appellant to produce its Tax audit report in form 3CD for the A.Y. 2011-12 and 2012-13. From the tax audit report in form 3CD (u/s. 44AB of the Income Tax Act, 1961), the following entries of the report bear mention:-

9	(a)	<i>Whether books of accounts are prescribed under section 44AA,</i>	<i>CASH BOOK (COMPUTERIZED) BANK BOK (COMPUTERIZED)</i>
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		<i>if yes, list of books so prescribed.</i>	<i>LEDGER (COMPUTERIZED) JOURNALS (COMPUTERIZED)</i>
	(b)	<i>Books of account maintained (in case books of account are maintained in a computer system, mention the books of account generated by such computer system.)</i>	<i>DO</i>
	(c)	<i>List of books of account examined</i>	<i>DO</i>

28	(b)	<i>In the case of a manufacturing concern, give quantitative details of the principal items of raw materials, finished produced and by products.</i>	<i>As informed by the management it is not practicable to give quantitative details of sales turnover.</i>
	(A)	<i>Raw materials: i) Opening stock; ii) Purchase during the previous year; iii) Consumption during the previous year; iv) Sales during the previous year; v) Closing stock; vi) *yield of finished products; vii) * percentage of yield; viii) * Shortage / excess, if any.</i>	

	<p>(B) <i>Finished products / By – products</i></p> <p><i>i) Opening stock;</i></p> <p><i>ii) Purchase during the previous year;</i></p> <p><i>iii) Quantity manufactured during the previous year;</i></p> <p><i>iv) Sales during the previous year;</i></p> <p><i>v) Closing stock;</i></p> <p><i>vi) Shortage / excess, if any.</i></p>	
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4.3.4 *It is abundantly clear from the comments of the auditor in the Tax Audit Report that no stock book has been maintained. Also, quantity wise sales turnover is not maintained, so a stock list based on opening stock, sales and purchase cannot be possibly be drawn up. Therefore the only other possibility under which a closing stock valuation could have been made, is an actual physical inventory taken of closing stock available (often provided to the bank against loan). Such a stock statement has no link to quantitative details of purchases, and therefore the appellant cannot justifiably link quantitative details of purchase with the closing stock. Hence this plea has to necessarily fail.*

4.3.5 *It is also pertinent to note that the closing stock as per the audited books for A.Y. 2012-13 (as can be seen from the audited final accounts signed by the auditor on 03.09.2012) is Rs. 4,74,01,230/-. The corresponding profit for the profit and loss*

account as per the same audited accounts is Rs. 14,43,230/-. In its revised return of income for A.Y. 2012-13 filed under return of income dated 29.09.2012, the appellant has reduced the so-called "over-valued" closing stock from the profit in the computation of total income, thus effectively reducing its closing stock to Rs. 2,30,01,230/- (Rs. 4,74,01,230 minus Rs. 2,44,00,000). However, it is seen from the audited balance sheet of the subsequent assessment year 2013-14, in which the same auditor has put his signature on 28.02.2013 (i.e., after filing of the revised return for A.Y. 2012-13) that the closing stock is shown as Rs. 4,74,01,230/-, and not Rs. 2,30,01,230/-. These facts effectively prove that the claim of reduction of closing stock in its revised return of income for A.Y. 2012-13 is a patently false claim, and which is proved to be so vis-a-vis its own accounts prepared subsequently and audited also. Therefore the claim of reduction of closing stock of Rs. 2,44,00,000/- has to be rejected. Accordingly I confirm the addition of Rs. 2,44,00,000/-. It would be noted that the addition of Rs. 2,44,00,000/- is confirmed not on account of the bogus purchases being disallowed, but on account of bogus claim of reduction of closing stock being rejected. This ground of appeal is dismissed."

3.2 The Ld. AR submitted that the above sum of bogus purchases of Rs. 2.44 crores was also carried on in the closing stock of the year. The Assessee has already submitted vide letter dated 16.3.2015 that the addition on purchases being bogus in nature, have been added to the total income and consequently as the same was carried on in the closing stock, the closing stock of the assessee was also reduced by the above amount. He therefore, submitted that there is a double taxation in the above sum. He further relied the decision of the Coordinate Bench in the case of Maruti Impex vs. JCIT (OSD), 2016 (5) TMI – ITAT Mumbai dated 9.3.2016 and the decision of the Chandigarh Bench in DCIT vs. Bicycle Mfg. Corpn. on 9.6.2003 (2004) 82 TTJ Chd 570. Therefore, it was stated that there is a double addition and the same should be deleted. Without prejudice to the above, the Ld. AR of the assessee also submitted that in case of the bogus purchases the only addition that can be made is with respect to the gross profit embedded in the above, if they are not carrying on in the closing stock.

3.3 The Ld. Departmental Representative vehemently supported the order of the Ld. CIT(A) and stated that Ld. CIT(A) has considered this issue in detail and has proved that there is no double addition. He further stated that for getting reduction from the closing stock the assessee must show that the items in the bogus purchases are lying in the closing stock at the end of the year. Unless this shows the adjustment suggested by the Ld. AR is not sustainable.

4. We have carefully considered the rival contentions and perused the orders of the lower authorities. Admittedly, the assessee has debited the bogus purchases of Rs. 2.44 crores in its profit and loss account. The assessee is engaged in the business of construction of residential houses, commercial buildings, flats, factory sheds etc. During the course of assessment proceedings, assessee has offered the addition to the extent of Rs. 2.44 crores as the bogus purchases. It was stated that the above expenses has not been claimed in the profit and loss account, but the whole amount of purchases has been added to the value of the closing stock at the end of the year. It was the claim of the assessee that when assessee has

already disallowed the bogus purchases, it should also get benefit by reducing the amount in the closing stock, because of the reason that inventory is to be valued, if found in existence as the bogus purchases inventory. It is not in existence, the consequent closing stock shown also to be reduced by the above amount. This claim of the assessee has been correctly rejected by the Ld. CIT(A) by stating that the opening stock in the subsequent year i.e. AY 2013-14, assessee has shown it to be Rs. 4,74,01,230/- and therefore, in that particular year the stock is debited to the profit and loss account. If the claim of the assessee is accepted then assessee must necessarily prove that items shown as bogus purchases were also carried on in the closing stock. The same has not been shown by proving the quantity of such goods as well as the price on which it is carried on in the inventory. Admittedly, no inventory is furnished in the opening and closing stock by the assessee. In this view, we do not find any infirmity in the order of the Ld. CIT(A), so far as it relates to rejecting the claim of the assessee of double addition.

4.1 Coming to the alternative arguments of the Ld. AR that in the case of bogus purchases, if they are not written off or reduced from the closing stock then, necessarily in the sale price the same is included and therefore, only gross profit on the same can be added. We find that the above arguments also supported by relying on 356 ITR 451 in the case of CIT vs. Simit P. Sheth of the Hon'ble Gujarat High Court as well as the several judicial precedents of the Coordinate Benches. The assessee has shown that in the year ending March, 2012, the gross profit ratio of the assessee is 9.25%. In view of this, we direct the Ld. Assessing Officer to retain the addition @9.25% of Rs. 2.44 crores of Rs. 22,57,000/- deserve to be retained and the balance addition of Rs. 2,21,43,000/- deserve to be deleted. The reasons being that once the bogus purchases have gone into the profit and loss account, and necessary sales have not been doubted, only option left with the revenue is to make the addition of the gross profit embedded in the bogus purchases. Accordingly, the ground no. 1 of the appeal is partly allowed.

4.2 The ground no. 1b which speaks about non granting of any opportunity to the assessee. At the time of the making addition by the Ld. CIT(A) was not at all argued by the Assessee. In view of this contention deserve to be rejected.

4.3 This is a solitary issue in the appeal, hence, the appeal of the assessee is partly allowed.

The decision is pronounced on 24.12.2020.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

“SRB”

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi