

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
&  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.A. No. 5872/DEL/2018  
Assessment Year 2015-16

Garg Acrylics Ltd., A-50/1, Wazirpur Industrial Area, New Delhi.	v.	Addl. CIT, Special Range-4, New Delhi.
TAN/PAN: AAACG3332N		
(Appellant)		(Respondent)

Appellant by:	Shri Ashwani Kumar, CA		
Respondent by:	Shri Mithun Shete, Sr.D.R.		
Date of hearing:	15	03	2022
Date of pronouncement:	14	06	2022

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned Appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-XXXV, New Delhi ('CIT(A)' in short) dated 24.07.2018 arising from the assessment order dated 30.12.2017 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2015-16.

2. The grounds of appeal raised by the assessee reads as under:
  1. That the Ld. CIT(A) has erred in confirming the disallowances of Rs.88,670/- made u/s 14A of the Act, ignoring the principles laid down by Hon'ble Supreme Court in case of PCIT vs. Sintex Industries [2018] 93 taxmann.com 24 (SC).
  2. That the Ld. CIT(A) has erred in confirming the purchases as bogus, to the tune of Rs.6,50,160/-calculated at Average G.P. Rate @ 16.26% of Rs.39,98,522/-,

*inspite of the following facts & submission made before her.*

*(a) That payments to the suppliers have been made through RTGS, banking channels;*

*(b) That the assessee has paid Entry Tax of these purchases, while entering goods in Punjab;*

*(c) That the goods so purchased are duly entered in Stock Inward Register;*

*(d) That all such purchases were duly supported by way bills, Bilty Etc.*

*(e) That all purchases, when sold are duly entered in Sale Register;*

*(f) That assessee company is an excisable unit 85 excise duty has also been paid on Sales thereof;*

*(g) That Quantitative Details of Opening Stock, Purchases, Sales, Work In Progress & Closing Stock, if OK, how the purchases can be bogus;*

*(h) That the Ld. AO have not pointed out any discrepancy in the books of accounts;*

*(i) That the assessee was not provided opportunity to cross examine Sh. R.P. Bhatia, whose statements have been used for making additions in the hands of assessee;*

*(j) That the principle of natural justice has not been followed, while passing the assessment order and making the additions in the hands of assessee.”*

3. Ground No.1 is dismissed as not pressed.

4. Ground No.2 concerns additions of Rs.6,50,160/- in relation to alleged bogus purchases of Rs.39,98,522/-.

5. Briefly stated, the assessee is engaged in the business of manufacturing and trading of yarn and garments. The assessee filed its return of income for the Assessment Year 2015-16 in question declaring total income at Rs.9,98,57,170/-. In the course of scrutiny assessment, the Assessing Officer *inter alia* alleged purchases of Rs.39,98,522/- made from M/s. Rishabh Foods controlled by Shri Ram Prakash Bhatia to be bogus. On the basis of information received from Investigation Wing in the course of survey carried

out at the premises of Shri Ram Prakash Bhatia and on the basis of statement recorded of Shri Ram Prakash Bhatia, the genuineness of purchases made by Assessee from M/s. Rishabh Foods amounting to Rs.39,98,522/- were doubted and aspersions were cast at the genuineness of purchases (cotton) claimed to have been made by the assessee from the aforesaid party. The Assessing Officer accordingly made an addition of Rs.7,99,704/- estimating profit embedded in such bogus purchase at 20%.

6. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) has endorsed the action of the Assessing Officer in principle but however modified and scaled down the amount of disallowance to Rs.6,50,160/- applying the average GP rate @ 16.26% instead of *ad hoc* 20% estimated by the Assessing Officer.

7. Aggrieved by the estimated additions of alleged bogus purchases, the assessee preferred appeal before the Tribunal.

8. We have carefully considered the rival submissions. The assessee has challenged the allegation of bogus purchases from M/s. Rishabh Food stated to be controlled by Shri Ram Prakash Bhatia and consequent estimated additions on the basis of GP rate in the past years of the assessee-company. It is the case of the assessee that the purchases have been doubted discarding the cogent evidences adduced solely based on the information received from Investigation Wing and statement of Shri Ram Prakash Bhatia and without providing any opportunity to cross-examine Shri Bhatia by assessee despite specific request. The assessee contends that the statement of Shri Bhatia has been used against the assessee-company for making additions/disallowances to the income of the assessee and therefore it was incumbent upon the Revenue to provide the cross-examination of the witness of the Department as a matter of fair play and in consonance with *sacro sanct* principles of natural justice. To support the genuineness of the impugned purchases, the assessee has relied

upon copious documents such as copies of ledger account, invoices raised by the supplier, copy of VAT-XXXVI issued by ICC Centre at Punjab Border when the goods entered into Punjab State, copies of excisable stock register form IV and RG-1 wherein the purchase quantity has been entered and finished goods produced out of it and sold to its customers; VAT returns showing the said purchases together with bank statement showing payment made through banking channels. The assessee also contends that the quantity details have not been disturbed by the Assessing Officer nor the books of account have been rejected and / or any discrepancy was shown therein. The assessee thus contends that in the backdrop of these elaborate documentation, the purchases made by the assessee running large scale business and showing huge profits could not have been discarded summarily on the basis of some unverified statement of one Shri R.P. Bhatia whose connection with the supplier M/s. Rishabh Foods has not been established at all. It was thus contended that neither the cross-examination has been provided nor the *locus standi* of the deponent of so called statement has been established. The assessee further contends that the CIT(A) has also brushed aside tell-tale evidences and summarily endorsed the action of the Assessing Officer based on some unvouched information and without giving any justification for giving undue weightage to the statement of unidentified person while substituting the overwhelming evidences.

9. We find merit in the plea of the assessee. The assessee, in the instant case, has declared a whopping turnover of Rs.1155.79 crore and also declared an income pegged in the vicinity of Rs.9.98 crore. The assessee therefore cannot be reckoned as anybody from the street. The amount of bogus purchases alleged is minuscule in the context of the voluminous business of the assessee. The documentation showing movement of goods towards impugned purchases also involves state government machinery as well as Central Excise Department. The purchases are carried out through banking

channel and backed by documents showing movement and delivery thereof. The Revenue has miserably failed to dislodge the sanctity of such formidable evidences in any manner except a statement of third person whose connection with the supplier has not been established. This apart, Shri Bhatia, i.e., witness has not been confronted to the assessee to unearth the truth. The assessee is entitled to cross-examine Shri Bhatia for a just and fair decision making. The Revenue has denied this valuable right and thus infringed the salutary principles despite request from the assessee before the lower authorities. Thus, the statement of Shri Bhatia is to be regarded as an extraneous to the determination of the issue. Once the statement of Shri Bhatia has excluded, the conclusion is obvious in the light of the documentary evidences towards its *bona fides* as claimed. Therefore, we find merit in the plea of the assessee for reversal of unjustified additions. Consequently, the order of the CIT(A) is set aside and the additions made towards bogus purchases are reversed.

10. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open Court on 14/06/2022.**

Sd/-  
**[YOGESH KUMAR US]**  
**JUDICIAL MEMBER**

DATED: /06/2022

*Prabhat*

Sd/-  
**[PRADIP KUMAR KEDIA]**  
**ACCOUNTANT MEMBER**