

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.413 OF 2017

Principal Commissioner of Income Tax,
Central - 4 ... Appellant
versus
M/s. Paramshakti Distributors Pvt. Ltd. ... Respondent

Mr. Shyam Walve, for Appellant.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE : 15th JULY, 2019

P.C.:

1. The Revenue has filed this Appeal to challenge the Judgment of the Income Tax Appellate Tribunal (“the Tribunal” for short). The following questions are presented for our consideration :

(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in reducing the addition from Rs.23.16 Lakhs to Rs.2,21,600/- under Section 68 of the Income Tax Act in respect of the purchases made from M/s. Chevron Metal Products Pvt. Ltd., in spite of the fact that the Director of the said Company had admitted that the transactions were merely accommodation entries ?

(ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the enhancement of GP made by the Ld.

CIT(A) from 2.59% to 6.00% of the turnover of Rs.151 crores, thereby giving undue relief of Rs.4.92 Crores to the assessee ?

2. The first question pertains to restricting the addition of Rs.23.16 Lakhs to Rs.2,21,600/- by the Tribunal. The Assessing Officer had made the said addition on the ground that the assessee's purchases were found to be bogus. The entire purchase amount was therefore, added to the assessee's income. The Tribunal, however, restricted to the said sum of Rs.2,21,600/-. The Tribunal recorded that the Assessing Officer has not rejected either the purchases or the sales made out of the said purchases. The Tribunal therefore, was of the opinion that the addition should be restricted to 10% of the total purchases. The Revenue strongly disputes this proposition.

3. Without elaboration, what the Tribunal by the impugned Judgment held is that the Department had not rejected the instance of the purchases since the sales out of purchase of such raw material was accounted for and accepted. With above position, the Tribunal applied the principle of taxing the profit embedded in such purchases covered by the bogus bills, instead of disallowing the entire expenditure. We do not find any error in the view of the Tribunal. No question of law arises.

4. The second issue pertains to addition at the hands of the Assessee made by the CIT (Appeals). It appears that the Assessee had disclosed profit at GP rate 2.59%. The Assessing Officer had not tinkered with this disclosure. However, in Appeal, the

Commissioner (Appeals) after putting the Assessee to notice, enhanced the profit @ 6% GP. The Tribunal by the impugned Judgment deleted such addition and allowed the Assessee's Appeal. The Tribunal noted that there was no material to discard the Assessee's book results. No incriminating material or evidence of the Assessee's transactions outside the books have been brought on record. It was under these circumstance, the Tribunal deleted the addition made by the CIT (Appeals). We do not find any error in the view of the Tribunal. There was no evidence on record to disturb the Assessee's book results. No question of law arises. The Income Tax Appeal is dismissed.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'सी', मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI

सर्वश्री आर.सी.शर्मा, लेखा सदस्य एवं श्री पवन सिंह, न्यायिक सदस्य

BEFORE SHRI R.C.SHARMA, AM

&

SHRI PAWAN SINGH, JM

आयकर अपील सं./ITA No.8748/Mum/2010

(निर्धारण वर्ष / Assessment Year :2005-2006)

M/s Paramshakti Distributors Pvt. Ltd., 501-B, Elegant Business Park, Andheri-Kurla Road, J.B.Nagar, Andheri(E), Mumbai-400059	Vs.	ACIT, Cent. Cir-45, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCP 5835 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA Nos.9223&9224/Mum/2010

(निर्धारण वर्ष / Assessment Years :2005-06 & 2006-07)

ACIT, Cent. Cir-45, Mumbai	Vs.	M/s Paramshakti Distributors Pvt. Ltd., 501-B, Elegant Business Park, Andheri-Kurla Road, J.B.Nagar, Andheri(E), Mumbai-400059
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCP 5835 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Vijay Mehta

राजस्व की ओर से /Revenue by : Shri Deepkant Prasad & Shri Nimesh Yadav

सुनवाई की तारीख / Date of Hearing : **26/08/2015**

घोषणा की तारीख/Date of Pronouncement **09/10/2015**

आदेश / O R D E R

PER R.C.SHARMA (A.M):

ITA No.9224/Mum/2010 (AY 2006-07):

This is an appeal filed by the revenue against the order of CIT(A), Mumbai, dated 15-10-2010, for the assessment year 2006-07, in the matter of order passed u/s.143(3) r.w.s147 of the I.T.Act.

2. The solitary issue in this appeal relates to deletion of addition made on account of share application money.

3. Rival contentions have been heard and record perused. Facts in brief are that during the assessment year, the assessee had received share application money from various companies. The AO has made the addition on the plea that the assessee has failed to prove the identity, creditworthiness and genuineness of the share application money received from 15 companies as under :-

Sl.No.	Name and Address of the Applicant	Total
1	Damidar Vanijya Pvt. Ltd.	45,00,000/-
2	Dayanidhi Vyapar Pvt. Ltd.	68,00,000/-
3	Dolphin Indotech limited	2,50,00,000/-
4	Dowell Finance Ltd.	25,00,000/-
5	Eastern Sponge Pvt. Ltd.	1,75,00,000/-
6	Feel Good Merchandise Pvt. Ltd.	20,00,000/-
7.	Information Synergies Pvt. Ltd.	30,00,000/-
8	Kamayani Commotrade (P) Ltd.	3,83,00,000/-
9	Prabhudhan Financial Services Pvt. Ltd	20,00,000/-
10	Rovam Tieups Pvt. Ltd.	25,00,000/-
11	Rubicon Pharmaceuticals Pvt. Ltd.	20,00,000/-
12	Satyam Commodeal Pvt. Ltd.	2,87,00,000/-
13	Shringar Marketing Pvt. Ltd.	4,75,00,000/-
14	Sumanta Trading &Commissioner Pvt Ltd	15,00,000/-
15	Vibhore Trading and Finance Ltd.	3,58,00,000/-
	Total	21,96,00,000/-

The AO stated that the assessee company has paid cash and has taken the accommodation entry of share application money and, therefore, made the addition.

4. Before the CIT(A) the assessee submitted as under :-

“it has received the share application money from the entities mentioned above. The assessee further stated that the following details regarding the share application money was provided to the AO:

- *The relevant details of the address / PAN identity of the subscriber.*

- *Confirmation received from them confirming the investment made by them in the company.*
- *Copies of their audited Balance Sheet*
- *Copies of appellant's bank statement showing the receipt of amount by cheque.*
- *Copies of signed share application received*
- *Copy of resolution*
- *Extract of master data from the website of Ministry of Corporate Affairs, Government of India giving details of the investing companies.*
- *I T return acknowledgement and audited accounts of all the parties.*

12. *The appellant argued that law relating to the source of share application money/subscription to share capital received by a company is well-settled and in cases where share applicants are identifiable, as in the case of the appellant, it is for the share applicants to explain the source .*

13. *The addition made by the AO was countered by the appellant by filing a chart of the why the AO disallowed and what the appellant's argument was on that issue. Therefore, the appellant submitted that the section 68 cannot be invoked.*

14. *The appellant next argued that addition in respect of share capital could not be made in its case. It was submitted that addition in respect of share capital cannot be made u/s. 68 of the Act. The appellant submitted that once the identity of the subscribers was established, there can be no basis for treating the amount as unexplained cash credit u/s. 68 of the Act. It was submitted that the appellant had furnished the PAN Nos. and all other relevant details of the shareholders and established their identity.*

15 *In this respect the appellant relied upon Apex court's decision in case of CIT v Lovely Exports [216 CTR 195 (SC)] wherein it is held, that even if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of the appellant company.*

16. *The appellant further relied upon following cases for establishing that the share application money received by the*

company cannot be added as undisclosed income in hands of the company:

- CIT v. Value Capital Services P. Ltd [307 ITR 334 (Del.)]
- CIT v. AKJ Granites P. Ltd. [301 ITR 298 (Raj.)]
- CIT V. First Point Finance Ltd. [286 ITR 477 (Raj.)]
- Shree Barkha Synthetic Ltd. v. ACIT [283 ITR 377 (Raj.)]
- CIT v. Belenje Investment & Trading Co. Ltd. (Income-tax Application No. 314 of 1993 dated 08.12.1993)
- Twin Roses & Traders Agency Ltd. v. ITO (ITA No. 2653/Bom/1995 dated 18.10.1995)
- Uma Polymers v. DCIT [100 ITD 1 (Jodh) (TM)]
- Standard Cylinders v. ITO [24 ITD 504 (Del)]
- Allen Bradley India Ltd. v. DCIT [80 ITD 43 (Del)]
- CITv. Stellar Investment Ltd. [192 ITR 287 (Del)]”

5. By the impugned order the CIT(A) deleted the addition by considering assessee's argument in the light of judicial pronouncement cited before him, after recording the following findings :-

“ 17. I have considered the submissions of the appellant and the order of the AO. On considering the documentary evidences furnished during the course of assessment proceedings, written submissions made before me and arguments made in the course of assessment proceedings before me, I have noted the following facts of the case:

18. The appellant company had received share capital money from the shareholders. The name, PAN No., Balance sheet, bank account statements and confirmation letters signed by respective shareholders were submitted to the AO during the assessment proceedings.

19. Considering the facts of the case and the documentary evidences submitted by the appellant company, I am of the opinion that as per settled law, a credit entry is accepted as genuine, if the identity and creditworthiness of the creditor and the genuineness of the transaction is provided by the appellant. It is not disputed that the appellant had filed before the AO documents and details regarding the share subscribers in question so as to establish these ingredients of a genuine credit. The identity of the subscribers stood proved by the fact that their name, address. PAN No., Balance Sheet, Bank Statement and confirmation letters, share application and share allotment details were submitted by the appellant company.

20. All these factors go to prove the identity of the subscribers. The creditworthiness of these parties is provided by the fact that all the payments have been made through the banking channels through

account payee cheque and that the Bank statements were also submitted by the appellant company. As the monies towards purchase of shares have been drawn from bank, it is clear that the monies were available. The appellant company could not have been asked for information other than that required under the Companies Act, 1956. It was not the appellant company's responsibility to go and physically verify the address of the applicant and see that he had sufficient funds to invest so long as the formalities involved in applying for and allotment of shares were completed. Thus, in all these cases, the creditworthiness of the creditors was proved.

21. As regards the genuineness of the transaction, there is no doubt regarding that. All transaction was made through banking channels. The confirmation letters are available on record. The shares were allotted in accordance with Companies Act. Most of the subscribers are Income Tax assessee and they have confirmed the transaction as genuine. In view of the above discussed facts the AO's action appears to be far fetched. Actually the AO has not been able to make out a case of unexplained cash credits with regards to this company.

22. The appellant has brought on record considerable evidence to show that the transaction of issue of share capital was genuine. That being so no addition under the provisions of section 68 can be made in the hands of the appellant. In the case of CIT vs. Stellar Investments Ltd. 192 ITR 287 (Del) Hon'ble Delhi High Court held that provisions of section 68 cannot be applied to such sums received by a company and credited in the share capital account of the company. This judgment of Hon'ble Delhi High Court did not find favour with subsequent larger bench of Delhi High Court and in the case of CIT vs. Sophia Finance Ltd 205 ITR 98 (Del) (FB) full bench of Hon'ble Delhi High Court held that provisions of section 68 apply to the credits representing share application money /share capital subscription in the same manner as ordinary cash credits. In that judgment it was further held that if the shareholder exists then possibly no further enquiry need be made. But if the Income tax Officer finds that the shareholders do not exist, then it would mean that there is no valid issuance of share capital. To that extent Hon'ble Delhi High Court found earlier judgment of the court in the case of Steller Investment Ltd. (supra) to be incorrect. In that judgment Hon'ble full bench of Delhi High Court observed that the AO would be entitled to enquire, it' would indeed be his duty to do so, whether the alleged shareholders do in fact exist or not. If the shareholder exists, then possibly no further enquiry need be made. But if the ITO finds that the alleged shareholders do not exist, in that case the ITO would have jurisdiction to treat such credits to be the income of the assessee by virtue of the provisions of section 68. Thereafter, the decision of Hon'ble Delhi High Court in the case of CIT vs. Stellar Investments Ltd. (supra) that was in part dissented from by the full bench of Hon'ble Delhi High Court in the case of Sophia Finance Ltd. (supra) came to be affirmed by Hon'ble

Supreme Court in the case of CIT vs. Stellar Investment Ltd., 251 ITR 263(SC). In spite of affirmation of Stellar Investment Ltd's judgment by Hon'ble Supreme Court; Hon'ble Calcutta High Court in a series of judgments reported in Hindustan Tea Trading Co. vs. CIT 263 ITR 289 (Cal); CIT vs. Ruby Traders & Exporters Ltd. 263 ITR 300 (Cal); CIT vs. Nivedan Vanijya Niyojan Ltd. 263 ITR 623 (Cal) held that Hon'ble Supreme Court has not laid down any law and the provisions of section would squarely apply to share application money/share capital subscription and on the company's failure to satisfactorily explain the sum received, the same could be assessed as the company's income by virtue of the provisions of section 68 of the Act. The A. O. has relied upon these three judgments of Hon'ble Calcutta High Court and also the judgment of Calcutta High Court in the case of Bhola Shankar Cold Storage vs. JCIT 270 ITR 487 (Cal). In the case of Sophia Finance Ltd., Hon'ble Delhi High Court, in effect, held that the jurisdiction of the AO to apply section 68 should be restricted to find out whether or not the shareholder in fact exists. Now, Hon'ble Supreme Court have upheld this view and finally quelled the controversy whether section 68 applies or not in the case of CIT vs. Lovely Exports (P) Ltd. 216 CTR (SC) 195. In that judgment Hon'ble Supreme Court have addressed to the question, "Can the amount of share money be regarded as undisclosed income under section 68 of I T Act, 1961 and answered, "if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the A. O., then the department is free to proceed to reopen their individual assessment in accordance with law." With these observations, Hon'ble Supreme Court has dismissed Special Leave Petition of the Department. It, therefore, follows that in the case of share application money or share capital contribution the enquiry in the case of the issuing company has to be confined to whether or not the shareholders do exist. In a case where existence of shareholder is not in doubt, any further action would lie in the assessment of the shareholder and not in the assessment of company.

23. Recently, the Hon'ble High Court of Delhi in the case of CIT-IV vs. M/s Dwarkadhish Investment Pvt. Ltd. (2010-TIOL-617-HC-DEL-IT) has held as under:

"The onus of proof was not static. Initially, the burden of proof was on the assessee. Yet, once, the assessee had proved the identity of the creditors or share applicants by either furnishing their PAN number or income tax assessment number and showed the genuineness of the transaction by showing the receipt of the money in his books either by account payee cheque or draft or by any other mode, then the onus of proof would shift. to the Revenue. Just, because the creditors or share applicants could not be found at the address given, it would not give the revenue the right to invoke section 68. Moreover, it was settled law that the assessee need not have to prove the source of the source.

24. *In the case of the appellant herein, all shareholders whose contributions have been assessed by the AO as appellant's income under the provisions of section 68 are duly incorporated companies. In the case of an incorporated company, the existence of the party cannot be denied. Once incorporated, a company exists until liquidated in accordance with law. If it is the case of the AO that these are bogus shareholders then the department is free to proceed to reopen their assessments in accordance with law. But in the case of the appellant, once existence of shareholder is not in doubt, no further action lies and the amount of share capital cannot be assessed as appellant Company's income chargeable to tax. In view of this legal position declared by the highest court of the land, I hold that the additions of Rs.21,96,00,000/- made by the AO in this behalf are required to be deleted in all the impugned assessment years."*

6. Against the above order of CIT(A), the revenue is in further appeal before us.

7. We have considered rival contentions, carefully gone through the orders of the authorities below and found from the record that the AO has made addition in respect of share application money received during the year. The CIT(A) has found the share capital to be genuine after considering various documentary evidence filed before AO. The CIT(A) has also applied the proposition of law laid down by various Hon'ble High Courts and Hon'ble Supreme Court to the facts of instant case and concluded that the existence of shareholders was not in doubt and held that as per documentary evidence submitted by the assessee company, the credit entry is liable to be accepted as genuine, insofar as identity and creditworthiness of the creditor and genuineness of the transaction is provided by the assessee. A finding has also been recorded by the CIT(A) to the effect that the assessee has filed before the AO documents and details regarding share subscribers in question, so as to establish these ingredients of genuine credit. The identity of the subscribers stood proved

by the fact that their names, address PAN Number balance sheet, bank statement and confirmation letters, share application and share allotment details were submitted by the assessee company. All these facts go to prove the identity of the subscribers. The CIT(A) further recorded a finding to the effect that creditworthiness of these parties was also proved by the fact that all the payments have been made through the banking channels through account payee cheques and that bank statements were also submitted by the assessee company. It was also observed that since money is towards purchase of shares having drawn from bank, it is clear that moneys were available. The finding recorded by the CIT(A) is as per material on record and do not require any interference on our part. Accordingly, we do not find any infirmity in the order of CIT(A) deleting the addition made on account of share application money.

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

ITA No.8748/Mum/2010 (by the assessee) and ITA No.9223/Mum/2010 by the revenue) for AY 2005-06 :

9. These are the cross appeals filed by the assessee and revenue for the assessment years 2005-06 in the matter of order passed u/s.143(3) r.w.s147 of the I.T.Act.

10. Rival contentions have been heard and record perused. Facts in brief are that the assessee company is engaged in the business of freight carriers and is dealer of iron and steel products. The assessee company filed their return of income on 31-10-2005 declaring income of Rs.79,59,861/-. The AO had during the course of assessment proceedings, asked the assessee to prove the genuineness and

creditworthiness of the creditors. The assessee filed various details to support his contentions. The AO rejected the contentions as the Director of M/s Chevron Metal Products Pvt. Ltd. Mrs. Mehrunnisa Hussaini, had admitted in her statement that the transactions with the assessee were only accommodation entries and only on paper and that the company does not have the capacity to advance such huge credit and made addition of Rs.23.16 lakhs.

11. Before the CIT(A), the assessee submitted as under :-

“The statement of Director of M/s Chevron Metal Products Pvt. Ltd. Mrs. Mehrunnisa Hussaini, was not recorded in the case of the appellant company and the copy of the same were also not made available to them. Further, the AO had accepted the purchases from the said party and also accepted the trading results but only treated the credit balance in respect of the said party as unexplained cash credit u/s 68 of the Income Tax Act, 1961. The appellant stated that the section 68 cannot be invoked in this case because the amount does not deal with cash credit but with the sundry creditors from whom the goods have been purchased. In the books of accounts of the appellant there is no cash credit but a liability has been created on account of purchases made in the regular course of business.

10. It was further argued that the amount added has been paid to the party in the subsequent year. It was stated that if the goods purchased from Director of M/s Chevron Metal Products Pvt. Ltd. Mrs. Mehrunnisa Hussaini are paper transactions then the purchases made by her are also paper transaction and then in her case also similar addition should have been made by the department, whereas, the department has made addition of only 0.25% to the commission income of 0.25% shown by Mrs. Mehrunnisa Hussaini director of M/s. Chevend Technology F Ltd and Chevron Metal Products (P) Ltd in the returned income. There is no addition made regarding the sundry creditors in her hand at all. In the case of the appellant also, following the same logic, the same should, be done by making addition of 0.50% as commission and no addition regarding the sundry creditors should be made.”

12. By the impugned order the CIT(A) deleted the addition after observing as under :-

I have considered the above submissions and also considered the facts of the case. The AO in para 1 on page 2 of the order mentioned that the appellant had filed the details regarding the sundry creditors and also produced the books of accounts along with the bank statement, bills and vouchers. The appellant also produced the copies of confirmation, bank statements, ledger, stock ledger, purchase bills regarding the following entities:

- 1. Nupur International Pvt. Ltd.*
- 2. Chevron Metal Products Pvt. Ltd.*
- 3. Nemani Steels Pvt. Ltd.*
- 4. Nagneshi Metals Pvt. Ltd.*

The AO has mentioned that however, Director of M/s Chevron Metal Products Pvt. Ltd. Mrs. Mehrunnisa Hussairii had admitted that the transactions with the appellant are merely paper entries and also this company does not have the capacity to advance such huge credit. Further, it has been held in the case of M/s SKS Ispat and Power Ltd, a group company in AY 2002-03 to 2007-08 that this company was merely providing accommodating entries, hence credit balance in respect of M/s Chevron Metal Products Pvt Ltd. was added to the income as unexplained creditors u/s 68 of the Income Tax Act, 1961.'

13. The addition has been made basically due to the addition made in the sister concern, which is also based on the statement of Director of M/s Chevron Metal Products Pvt. Ltd.

14. I have considered the submissions and also the order of the AO. In the case of the appeal of SKS Ispat and Power Ltd, wherein the addition has been made on the basis of the statement of Director of M/s Chevron Metal Products Pvt. Ltd. Mrs. Mehrunnisa Hussaini has been partly allowed vide order No CIT(A)36/AP.27 /09-10 dated 15/10/2010. The GP of this concern is 6%. The AO is therefore directed to take the GP

16. The addition has been made basically due to the addition made in the sister concern, which is also based on the statement of Director of M/s. Chevron Metal Products Pvt. Ltd.

17. I have considered the submissions and also the order of the AO. In the case of the appeal of SKS Ispat and Power Ltd., wherein the addition has been made on the basis of the statement of Director of M/s. Chevron Metal Products Pvt. Ltd. Mrs. Mehrunnisa Hussaini has been partly allowed vide Order No. No CIT(A)-361 AP.27 109-10 dated 15/10/2010. The GP of this concern is 2.59% and the turnover is approximately 151 crores. In order to maintain consistency, in all the orders, the GP of 6% is taken in this case also. Accordingly, since this results in enhancement, the appellant was vide order sheet entry dated was asked to give reply to the enhancement The appellant objected and stated that the GP cannot be uniformly applied in all the cases as a standard measure. The appellant is in trading of different items as compared to M/s. SKS

Ispat and Power Ltd. Further, the turnover of the appellant is much more and hence the standard GP cannot be applied in such circumstances. The above arguments of the appellant have been considered and are rejected as the appellant is a part of the same group and dealing in almost similar category of items. The GP of 6% is therefore applied in this case also and after giving benefit for the disclosed GP of 2.59%, the addition is made of 3.41% in the GP. Accordingly, for the turnover of about Rs.151 crores, the addition will be Rs.5.15 crores. Hence, there is enhancement in this case of Rs.4.92 crores. Therefore, the ground of the appellant is dismissed.”

13. Against the above order of CIT(A), both assessee and revenue are in appeals before us.

14. The revenue is aggrieved against the deletion of addition of Rs.23.16 lakhs, whereas the assessee is aggrieved for the addition made by the CIT(A) by directing the AO to enhance the GP by 3.41%.

15. We have considered rival contentions, carefully gone through the orders of the authorities below and found from the record that while completing the assessment, the assessing officer made the addition of Rs. 23,16,000/- u/ s 68 of the Act to the income of the assessee in respect of the purchases made from one M/s. Chevron Metal Products Private Limited for the reason 'that its director Mrs Mehrunissa Husseini had admitted that the transactions were merely accommodation entries. The assessing officer also referred to the orders passed in the case of SKS Ispat and Power Ltd. for A.Y. 2002-03 to 2007-08 wherein the additions had been made u/s.68 of the Act in respect of M/s Chevron Metal Products Private Limited on the ground that it was merely providing accommodating entries. The CIT(A) deleted the addition by observing that purchases were genuine, however, at the very same time, the CIT(A) directed the AO to estimate the gross profit at 6%. Thus, as against gross

profit of 2.59% declared by the assessee, the AO was directed to assess the GP rate at 6% meaning thereby net addition of 3.41% of the total turnover.

15. It was argued by Id. AR that the AO has merely relied upon the statement of Mrs. Mehrunissa Husseini wherein she appears to have admitted that transactions entered into by her are mere paper transactions. Our attention was invited to statement recorded on 15-1-2007, wherein she stated the transactions are genuine. The relevant questions are question no. 3, 4, 5, 11, 21, 22, 32, 33, 34 and 35 and answers thereto. The answers to question nos. 32 to 34 clearly show that she had confirmed her transactions with SKS Ispat and group companies as genuine when she was questioned about it. It is also evident that she has neither made any reference to the transactions with the assessee nor mentioned that the transactions with the assessee are not genuine. Our attention was also invited to another statement dated 26-08-2008 of Mrs Mehrunissa Husseini. In this statement Mrs Mehrunissa Husseini has confirmed her transactions as genuine, however when she was confronted about offering 0.25% of commission in the return filed, she has admitted that her transactions were paper entries in order to save her skin. However, Mrs Mehrunissa Husseini has not referred to or made any mention of the assessee in any of her statement. As per Id. AR since Mrs Mehrunissa Husseini has given two contradictory statements, her statements cannot be relied upon to sustain the addition of Rs.

23,16,000/-. It is also worth noting that the Assessing Officer has not carried out any inquiry to show that the purchases were not genuine.

16. Ld. AR vehemently argued that quantitative tally of purchase and sale has not been doubted by the AO meaning thereby all the purchases have been accepted by the AO with its corresponding sales. Our attention was also invited to page No.2 of the assessment order wherein the AO has clearly stated that stock ledger reflecting purchases had been produced before him.

17. On the other hand, Id. DR relied on the order of AO and contended that the CIT(A) was not justified in deleting the addition made on account of purchases from Mrs. Mehrunissa Husseini's company.

18. We have considered rival contentions, carefully gone through the orders of the authorities below and found that the contradictory statement was given by Mehrunissa with regard to the sales undertaken by her. However, nowhere she has stated the name of assessee company with regard to any bogus sales. It is a matter of record that nothing wrong was found by the AO in the books of account. All the purchases have been accepted by the AO and its corresponding sales. Once the sales have been accepted, there must be purchases. Under such circumstances, it is possible that bills have been taken from one party, whereas goods have been purchased from some other party. Keeping in view the totality of facts and circumstances of the case the total purchases cannot be disallowed. Accordingly, we direct the AO to restrict the addition to the

extent of 10% of the purchases so as to serve the end of justice. Accordingly, we uphold the addition of Rs.2,21,600/-.

19. Now coming to the direction of CIT(A) to the AO for estimating GP rate of 6%. There is no merit in the action of CIT(A) for directing the AO to estimate the assessee's GP rate at 6%, which was upheld by him in case of SKS Ispat & Power Limited. Neither it is the case of AO nor it is case of CIT(A) that assessee has not maintained proper books of accounts and that it had not reported true and correct state of affairs. Without rejection of books of accounts it is not justifiable to estimate the profit. In the case of Girish M. Mehta, 105 ITD 585, the Tribunal observed as under :-

“9. As per our considered view before rejecting the books of account, the Department has to prove that accounts are unreliable, incorrect or incomplete, the accounts regularly maintained in the course of business, duly audited under the provisions of I.T. Act and free from any qualification by the Auditors, should be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. Even though, it is not possible to lay down the exact circumstances in which accounts should be rejected as unreliable or incorrect, yet the accounts may be rejected as unreliable if important entries and transactions are omitted therefrom or if proper particulars and vouchers, bills, etc. are not forthcoming or if they did not include entries relating to particular class of business transaction. The assessee should invariably be given opportunity for offering explanation regarding defects in accounts and on his failure to satisfactorily explain the defects, the Department would be justified in rejecting the books of account. Thus, books of account should not be rejected light-heartedly. The duty of the Assessing Officer is to administer the provisions of the Act in the interest of public revenue and to prevent evasion or escapement of tax legitimately due to the State. At the very same time, the duty of the Appellate Authority is to ensure not only that the provisions of the Act are administered in the interest of public revenue so as to prevent evasion/escapement of tax, but at the very same time to ensure that only the tax legitimately due to the State is collected.”

20. Applying the proposition of law laid down hereinabove to the facts of instant case, we do not find any justification in estimating GP rate

without rejecting the books of account. As we have already upheld the addition of Rs.2,31,600/- on account of purchases which was pointed out by the AO, there is no justification for applying the higher GP rate to the entire sales of the assessee which was Rs.151 crores. In case of Girish M. Mehta (supra), the Tribunal has elaborately explained the principle of rejection of books of accounts and estimating GP rate in para 9 of the said order is precisely applicable to the facts of the case. It is also pertinent to mention here that the AO has nowhere doubted the quantitative tally/stock register maintained by the assessee. No incriminating material or evidence in respect of other transactions of the assessee have been brought on record. Therefore, addition in the GP, if any, should be restricted to the extent of part of the purchases made from M/s Chevron Metal Products Private Limited. Since we have already upheld the addition of Rs.2,31,600/-, there is no justification for estimation of assessee's GP at 6% as directed by CIT(A). We direct accordingly.

21. In the result, appeal of the assessee is allowed, whereas appeal of the revenue is allowed in part in terms indicated hereinabove.

Order pronounced in the open court on this 09/10/2015.

Sd/-
(पवन सिंह)

(PAWAN SINGH)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 09/10/2015

प्र.कु.मि/pkm, नि.स/ PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.

Sd/-
(आर.सी.शर्मा)

(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai