

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

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

ITA Nos.563/Asr/2018
Assessment Year 2010-11

M/s SupertechForgings (India) Pvt.Ltd. Vill.Raowali,PathankotRoad, Jalandhar		Vs.	Dy.CIT, Circle- IV. Jalandhar
Pan No.AACCS0402M (Appellant)			(Respondent)

Appellant by	Sh. Rohit Kapoor CA and Veer Sain Aggarwal Adv
Respondent by	Sh. Rajinder Kaur CIT DR

Date of Hearing	15.07.2021
Date of Pronouncement	25.08.2021

ORDER

Per, Dr. M. L. MEENA, A. M.:

This appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax(Appeals)-2, Jalandhar, dated 16.10.2018, in respect of Assessment Year 2011- 12.

2. The assessee has taken following Grounds

“1.That the Id.CIT(A) has grossly misdirected himself in law and on facts, in upholding the validity of reopening of the case u/s.147/148, by not appreciating the assessee’s contentions

in correct perspective. His reliance on a few judicial authorities, not relevant to the facts of this case, is also misplaced.

2.That the Id.CIT(A), swayed by the so-called prevailing menace of bogus bills, misconstrued the facts and the legal position of this case, to uphold the addition of Rs.4,26,93,470/-, as made by the Id.AO, alleging that the purchases made by assessee of the said value, were bogus.

3.That the Id.CIT(A) was wholly unjustified in holding that the assessee failed to produce one Mr Madan Lal Pahuja, the supplier, whose statement, recorded by ADIT, (Inv), Ludhiana, not witnessed by anyone else, was the sole basis to initiate proceedings u/s.147/148.

4.That Mr Madan Lal Pahuja, being the sole witness of revenue, ought to have been allowed cross examination by the assessee, which having not been allowed by the AO even when asked for, rendered the impugned assessment illegal, being in gross violation of sacred principles of natural justice. The Id.CIT(A), not only erred in not holding the impugned order bad on this score, but also committed a grave legal error to shift the onus on assessee to produce the said person.

5.That when neither the stock tally, nor the sales made were disputed, holding the purchases bogus was prime facie uncalled for, which the Id.CIT(A) ought to have appreciated to delete the addition made by Id.AO.

6.That the revenue itself having taken a contrary stand in the reassessment proceedings of Mr Madan Lal Pahuja, wherein the same very sales made by him were held to be his business turnover in his assessment for AY 2010-11, the Id.CIT(A) committed a grave error in ignoring this contention, to uphold the addition made by Id.AO.

7.That the Id.CIT(A) was not justified in just brushing aside various judicial decisions, relied upon by assessee, squarely applicable to the facts of this, case by wrongly holding the same as distinguishable on facts.

8.That the orders of the authorities below are against law and facts of the case.

9. That the assessee reserves the right to amend, alter or raise an additional ground of appeal before the disposal of this appeal.”

3. Briefly, the facts on record are that the appellant company is engaged in the business of manufacturing of ACSR Conductors (Aluminum conductor steel reinforce), DPC Wire Strips (double paper covered wire), steel wire ropes, PVC Cables and besides trading of M.S Pipes, aluminum wire and allied products.

3.1 Primarily, the assessment has been framed u/s 143(3) on 12.06.2012 and the trading results were accepted by the department during complete scrutiny. However, certain other additions were made by the AO and later on the assessee approached CIT(A) who had provided part relief of Rs. 3.50 L out of the total additions. Neither the department nor the appellant had filed appeal against the order of the CIT (A).

3.2 The case was reopened u/s 147 on 30.03.2017 on the basis of the information received by the AO from the investigation wing in the form of statement recorded in the case of Sh Madan Lal Pahuja.

3.3 In the reasons recorded, the AO has mentioned that the purchases made from Madan Lal Pahuja M/S Shiv bhole Kirpa Traders Rs. 1.05 Cr, Lovy Steel and Allied Industries Rs. 0.17 Cr and Jatinder kumar prop. Shree Nath Ispatudhyog Rs. 2.06 Cr are bogus and as such there is escapement of income to the tune of Rs. 4.26 Cr: -

3.4 In the reasons to believe dated, 22 March 2017 it was mentioned as under:-

As per the information received from the **Investigation Wing, Ludhiana**, it has been found that the assessee company had taken bogus purchase bills from the concerns owned by **Sh. Madan Lal Pahuja and Sh. Jatinder Kumar** during the F.Y.2009-10 as per the details given below: -

Name of the person	PAN	F.Y.	Amount
Sh. Madan Lal Pahuja HUF Prop. M/s Shiv BholeKirpa Traders ,Shirnlapuri, Ludhiana	AAJHM9232R	2009-10	1.05 Cr
M/s Lovy Steel & Allied Industries, Dr. Bansal Clinic, sector-3C, Mandi Gobindgarh		2009-10	0.17 Cr.
Sh. Jatinder Kumar Prop. M/s Shree Nath Ispat Udyog, Bank of India Road, Mandi Gobindgarh	ASYPK2358M	2009-10	2.06 Cr.
		Total	4.28 cr.

The statement of Sh. Madan Lal Pahuja was recorded on oath on 07.01.2015 by the ADIT (Inv.), Ludhiana in which Sh. Madan Lal Pahuja himself admitted that he was providing bogus bills to the assessee company through his HUB' Proprietary concern named as M/s Shiv BholeKirpa Traders, Ludhiana and other concern named as M/s Lovy Steel & Allied Industries, Mandi Gobindgarh.

Further, Sh. Madan Lal Pahuja admitted in the statement recorded on oath on 07.01.2015 by the ADIT(Inv.), Ludhiana that he had not made any physical transactions with the above mentioned assessee company during the relevant period and all the transactions were only paper transactions. He was charging commission @ Rs. 5000 per month from the assessee company.

Thus, Sh. Madan Lal Pahuja through its HUF Proprietary concern named as **M/s Shiv BholeKirpa Traders**, Ludhiana and through his other concern named as **M/s Lovy Steel & Allied Industries, Mandi Gobindgarh** was engaged in providing bogus sale entries through these above mentioned concerns and now there is no operation in all these concerns since 01.04.2014.

Further, as per the **finding of the office** of ADIT(Inv.), Sh. Jatinder Kumar through his Proprietary concern named as **M/s Shree Nath Ispat Udyog**, Mandi Gobindgarh was maintaining two bank accounts and perusal of bank statements of which reveals that amount deposited by cheques/RTGS has been withdrawn by cash either on the same day or the next day or transferred to the accounts of **M/s Shiv BholeKirpa Traders** thereby leaving behind the minimum balance. However, most of the deposits have been withdrawn by him in cash through self paid cheques. It is pertinent mention here that **M/s Shiv BholeKirpa Traders** was the Proprietary concern of Sh. Madan Lal Pahuja(HUF). This clearly establish the fact that both Sh. Madan Lal Pahuja and Sh. Jatinder Kumar were interconnected with each other and was also engaged in providing bogus sale entries through these above mentioned concerns. Also as per the findings of the office of the ADIT (Inv.), Sh. Jatinder Kumar is now not traceable.

Further, on doing the **independent verification** of the assessment record of the assessee company for AY 2010-11, it was noticed that the amount of purchases made by the assessee company from **M/s Shree Nath Ispat Udyog, Mandi Gobindgarh** amounting to Rs. 2.06 crores and from **M/s Shiv BholeKirpa Traders, Ludhiana** amounting to Rs. 1.05 crores matched with the information received from the office of ADIT (Inv.), Ludhiana.

In the light of the above mentioned facts and circumstances of the case of the assessee company, it is clear that by making bogus purchases of Rs.4.28 crores, the assessee company had inflated the expenses and thereby suppressed the profits by Rs. 4.28 crores. Under these circumstances, .1 have reasons to believe that the amount of Rs.4.28 crores, resulting in suppression of profit, has escaped assessment by the reason of failure on the part of the assessee to disclose fully and truly all

material facts necessary for its assessment for the A.Y. 2010-11. Therefore, in order to bring the aforesaid escaped income within the ambit of taxation and also any other income chargeable to tax which has escaped assessment and which comes to notice subsequently in the course of the assessment, it is expedient to issue notice under section 148 of the Income-tax Act, 1961. Approval to issue notice under Section 148 is, therefore, solicited as provided under section 151(1) of the Income-tax Act, 1961.

4. The assessee after receipt of the reasons to believe, filed the objection vide letter dated 10th of July 2017 mentioning therein that, the assessment proceedings of the assessee were completed under section 143 (3) of the Act, and the entire transaction of the assessee was examined by the assessing officer, therefore in view of first proviso of section 147, no reopening could be made by the assessing officer. It was submitted that there was no failure on the part of the assessee to disclose either the purchase of goods purchased from the parties named in the reasons for reopening or is no material failure on the part of the assessee to disclose fully and truly all material is necessary for that assessment year. In the reply it was submitted as under:

“ Even otherwise, on a bare perusal of the reasons recorded, it crystals out that the Id.AO in this case, but for mechanically relying upon the information gathered and forwarded by the Investigation Wing Ludhiana, and the inferences drawn by them on the purported statements of Shri Madan Lal Pahuja and Jatinder Kumar, denying supply of goods by three of their firms namely M/s Shiv BholeKirpa Traders, Ludhiana, M/s Lovely Steel & Allied Inds, Mandi Gobind Garh, and M/s. Nath Ispat Udyog, Mandi Gobind Garh, has not drawn any satisfaction of his own, as to the truth of the matter. As mentioned by him, from the

assessment records, he claims to have simply verified the value of goods purchased by assessee from the said parties worth Rs.4.28 crores, which he found to match with the information received from ADIT (Inv) Ludhiana. This verification per se was not enough, since it was admittedly there on record furnished in earlier proceedings. He ought to have for himself gone further into the veracity of statements recorded by the ADI vis a vis the quantitative details, the sales made, the mode of sales realization and the progressive trading results. How did he satisfy himself about the sales made to registered dealers, if the purchases to his mind were bogus ?. Obviously, he never reached the satisfaction, which he ought to have objectively drawn, by application of his own independent mind to the information before him. Also, when the statements were taken at assessee's back, how the same could carry any evidentiary value to take a dig on assessee's return, corroborated by audited accounts and duly accepted by the department after regular scrutiny.

- There is another important aspect which cannot be lost sight of. All the business premises of assessee, at various locations, were surveyed by the Income tax department last year on 19.08.2015 when the entire lot of documents, records, stocks, cash, investments and various other details were thoroughly verified and examined.

Quite a few documents were impounded also. But even this marathon exercise undertaken by the department for so many days, failed to unravel anything of the sort, which could even remotely suggest that the assessee indulged in bogus purchases. Had it been a reality, then some clue of it would have definitely surfaced in the survey carried out by department, without a notice to the assessee.

- Therefore, from the above threadbare analysis of the facts and the material before the AO, it is evident beyond doubt that he failed on both the counts viz (i) firstly that there was any real escapement of income as envisaged u/s.147 and (ii) that it was on account of assessee's failure to fully and truly disclose the material facts necessary for assessment. He merely resorted to action u/s.147 in the subtle realm of suspicion fueled by the ADIT's report.

- Apart from above, the reopening on a borrowed satisfaction of another authority has been held to be bad in numerous judicial authorities. Even the Hon'ble P&H High Court in **CIT vs. Paramjit kaur reported in (2009) 311 ITR 38(P&H)**, held as follows (head note):

*“—Reason to believe—Information from Survey Wing of the Department—AO can assume jurisdiction under s. 147 provided there is sufficient material **before him and the existence of material must be real**—Further, there must be nexus between the material and the escapement of income—AO has to record reasons showing due application of mind before taking recourse to reassessment proceedings—AO cannot take recourse to reassessment proceedings merely on the basis of reasons to suspect—In the instant case, AO had initiated reassessment proceedings simply on the basis of information received from the survey circle that the assessee had got prepared a demand draft for a sum of Rs. 83,040 which was not accounted in her books of account—**AO had not examined and corroborated the said information before recording his own satisfaction of escaped income and initiating reassessment proceedings**—Thus, it cannot be said that the reassessment proceedings were based on belief that income chargeable to tax has escaped assessment—Therefore, issuance of notice under s. 148 was not valid.”*

Hon'ble Gujrat High Court in VarshabenSanatabhia Patel vs. ITO (2016) 129 DTR 261(Guj) held that the AO, in reasons recorded for purpose of reopening assessment, placed reliance **upon record of case**—There was no assertion as regards on what basis AO stated that Assessee made claim in respect of bogus purchases in trading and Profit and Loss Account as expenditure—AO stated that on verification of details available on record, it had been noticed that Assessee made bogus purchases; however, no specific averments were made as regards which details available on record reflected such bogus purchases—The Hon'ble Court held that ...**“AO for purpose of reopening assessment placed reliance upon material from external source that did not form part of record—It was settled legal position that substratum for formation of belief that income liable to tax has escaped assessment, had to form part of reasons recorded—Apparently, substratum for formation of belief, as indicated in order rejecting objections as well as affidavit-in-reply, was information given**

by DGIT (Inv.), that had no relation with reasons recorded—AO, on basis of material on record, could not have formed belief that there was any escapement of income chargeable to tax so as to validly assume jurisdiction u/s. 147—Reasons recorded for re-opening of Assessment could not be supplemented in affidavit or by order rejecting objections—Material, on basis of which, belief that income chargeable to tax escaped assessment has been formed, had to find place in reasons itself— Formation of belief that income has escaped assessment not being based upon record, substratum for reopening the assessment could not be said to be laid in reasons recorded—Thus, basic requirement for assumption of jurisdiction u/s. 147 for reopening assessment was not satisfied— Impugned notice u/s. 148 could not be sustained”.

What is explicit from the above discussion is that the so called ‘reasons recorded’ are merely the ipsi dixit of ADIT (Inv) Ludhiana, simply rewritten by the AO, without application of his own independent mind, as to facts and the information/material in his possession, if any. For all purposes, the report received from ADI, in total exclusion to anything else, seems to have been taken as holy and sacrosanct, with no efforts made to reach necessary satisfaction, much opposed to the basic postulate of section 147. Obviously, therefore, it is the borrowed satisfaction of the ADI, which is central to the reasons recorded, with no effort visibly made by AO to further dilate on the issue by making any enquiry or by gathering any further corroborative evidence of his own. It is settled law that the provisions of section 147 envisage personal satisfaction of the AO recording the reasons and not of any other superior/parallel authority. Such substituted satisfaction vitiates the very assumption of jurisdiction u/s.147. In **CIT v Self Stock broking Ltd (2010) 325 ITR 285(Del)**, their lordships, in identical facts, while dismissing revenue’s appeal, held as under(Head note):

5. Assessing officer, had issued a letter to the assessee dated 8.8.2017 informing that objection raised by the assessee were disposed of in the following manner:

The main objections raised by you can be summarised as under:-

1. *The proceedings could not have been initiated as there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment.*
2. *The A.O. has mechanically relied upon the information received from the investigation wing, whereas he should have himself verified the statements recorded and all other facts before initiating the proceedings u/s 147.*

In this regard, your attention is drawn to the following case laws which are self speaking and establish beyond doubt that the proceedings in this case have been rightly initiated:-

1. *Ropar district co-op milk producers union ltd Vs CIT [2009]311 ITR 42 (P & H)*

Reassessment- discovery of new and important facts not present at the time of original assessment constitute " reason to believe that any income chargeable to tax has escaped assessment."

2. *Hanumant trading co Vs CIT [2001] 250 ITR 365(Delhi)*

Subsequent information that creditors were bogus name lenders- Nexus between material and relief- reassessment proceedings valid.

3 *Sterlite Inds. Ltd Vs ACIT [W.P. No. 27780 of 2007 & M.P. of 2007 decided on 12.03.2008](Madras)*

Reassessment notice based on information from Enforcement Directorate showing possible inflation of purchases was valid notice.

4. *ACIT Vs Raj eshJhaveri stock broker [2007]291 ITR 500 (SC)*

If the assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had

escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion

In other words, at the initiation stage, what is required is reason to believe, but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage.

3. Swaraj Engine Ltd Vs ACIT [2002] 260 ITR 202 (P&H)

One of the purposes of section 147 appears to us to ensure that a party cannot get away by willfully making a false statement at the time of original assessment and when that falsity comes to notice, to turn around and say 'you accepted my lie, now your hands are tied and you can do nothing'. It would be a travesty of justice to allow the assessee that latitude.

6. Phool Chand Bajrang Lal Vs ITO[1993]203 ITR 456(SC)

He may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information.

In view of the above, your objections to the initiation of proceedings u/s 147 are hereby rejected as not sustainable and you are requested to cooperate in the early finalization of the assessment proceedings.

Further it is also hereby intimated that the enquiry letters u/s 133(6) issued by this office to all the 3 parties viz. M/s Lovy Steel and Allied Industries, M/s ShreenathIspat Udyog, M/s Shiv BholeKirpa Traders have been received back unserved. Thus the onus now lies on you to prove the genuineness of these parties.

Your attention is invited to the notice u/s 142(1) issued by this office on 31.05.2017 and you are requested to furnish the complete information called for in that notice. Your case is now fixed for 22.: 2017.”

6. During assessment proceedings, the appellant was asked to explain the purchases made from parties on the basis of which re-opening was made. The appellant has submitted VAT returns, bills, stock tally, GP chart along with the detail of parties to whom the sales were made. The appellant also submitted that the goods purchased were not used in manufacturing activities and were only traded. The bifurcated trading results of manufacturing and trading activities duly supported by stock tally were also submitted during the assessment proceedings.

6.1 The AO had pointed out some defects (i.e. in respect of 7 bills out of 33 bills) in the truck no, as mentioned in the bills so submitted by the appellant on the basis of verification being carried out from the VAHAN National Register e-Services. The total amount of bills which were pointed by the AO were to the tune of Rs. 0.53 Cr out of total alleged bogus purchases of Rs. 4.26 Cr.

6.2 The appellant in response to the same submitted that the goods were purchased on FOR basis and no freight was separately paid for trading goods and relied upon the stock tally and bifurcated trading results. The appellant also pressed that the sales cannot be made without making

purchases and submitted VAT returns and other relevant documents as an evidence for sale being made.

6.3 The AO however, not being satisfied with the assessee's reply on purchases disallowed the entire purchases amounting to ₹ 42693470/- holding as unverifiable purchases from the following parties: -

Sr. N	Name of the Concern	Amount of Purchases
1.	Madan Lal Pahuja M/S Shiv bhole Kirpa Trade Shivpuri, Ludhiana	1.05 Cr
2.	Lovy Steel and Allied Industries, Sector 3 Gobindgarh	0.17 Cr
3.	Jatinder kumar Shree Nath Ispatudhyog, gobindgarh	2.06 Cr
4.	Shree Radhey Steel & Alloys	0.99 Cr
TOTAL		4.26 Cr

7. Feeling aggrieved by the order passed by the assessing officer the assessee preferred the appeal before the CIT(A). During the appellate proceeding, the CIT(A) had sought the remand report on the documents submitted by the assessee from the assessing officer, however after receipt of the remand report and reply, the CIT(A) was not convinced with the reasoning given by the assessee, he had also not considered the fact that the objections were not disposed of in terms of the judgement of the Hon'ble Supreme Court in the matter of, G.K.N Drive shaft. Further he had also not considered that, the parties which were considered to be providing the bogus bills to the assessee was subject matter of the assessment in the

subsequent assessment years 11-12 and 12-13 and where transaction have been accepted by the assessing officer. The same fact was brought to the knowledge of CIT(A) through letter dated 15-10-18. However, the same was not considered while desposing off the appeal. Further the assessee has submitted that in the case of Shri Madan Lal Pahuja FIR was registered in the year 2009 and thereafter the VAT assessment was completed for the Financial Year 2009-10 vide order dated 01-03-12 (PB 245) in hands of Ms Shiv BholeKirpa traders. In the said order, the sales of the Concern were accepted by the Department. Further the VAT assessment in the case of appellant was also completed in the hands of the assessee vide order dated 08-05-2012 (APB, Pg. 243-245). In the said order the purchases made by the assessee from Ms Shiv BholeKirpa traders and other concerns were accepted by the VAT department. It was also pointed out by the assessee that even the sales were accepted in the hands of the Sh Madan Lal Pahuja in the assessment order 20-12-2017 which was passed by the assessing officer prior to passing of the assessment order on 26-12-2017 in the case of appellant. He had also relied upon the judgement of the Hon'ble Bombay High Court in the matter of CIT(A) V Nikunj Exim Enterprises (P) Ltd 35 taxmann.com 384.

8. The Ld AR had also submitted before the CIT(A) that in subsequent assessment years the purchases made from these parties were accepted by the assessing officer. The reply of the assessee was duly mention in the order passed by CIT(A) at page 15, it was mentioned in the order that:-

“The supplies received by assessee from, four of the parties, which have been held to be bogus 'during the year under appeal, continued even in the succeeding year. The

positioli as to purchase made in the year ending 31.03.2011 i.e in A.Y 201'1-12 from the said suppliers is detailed as under:-

Sr. No.	Name of the party	Value of purchase.made (INR)
1.	M/s Shiv BholeKirpa Trade	1,21,83,276
2.	MN Shri Nath ispat Udyog	69,33,329

Further, in A.Y 2010-11, and even in A.Y 2011-12, the return filed by assessee was taken in scrutiny and assessment made u/s 143(3) completed vide order dated 04.06.2013 by the ACIT Circle IV, Jalandhar(copy of order placed on record). Interestingly, the purchases made in these years, even when the copies of suppliers account, for the later years, were also filed, have not been brought in dispute by the assessing authority. That being so, it defies logic as to, why in one year the purchase from the same suppliers should be disputed, when another year, the same have been accepted without dispute. Therefore, even, on this premise, the assessee has a strong case to succeed in its appeal for the year under consideration”

9. He also relied upon the decision in the case of Punjab and Haryana High Court in the matter of **Leader Valves (P.) Ltd [2006] 285 ITR 435 (PUNJ. & HAR.)** wherein it was held as regards question No. (i) Shri Patwalia, learned counsel for the Revenue, has vehemently argued that the findings of the Tribunal pertaining to deletion of the addition of Rs. 1,48,93,286 in the income of the assessee on account of bogus purchases, are totally perverse. We are, however, unable to persuade ourselves to agree with learned counsel. We find from the Tribunal's order that the analysis and conclusions drawn by the Commissioner of Income-tax (Appeals) on the appreciation

of material on record, have been concurred with the Tribunal after taking notice of the fact that the trading results of the assessee had all along been accepted and the purchases of scrap from the seven parties could also be not termed as bogus for the reason that in the subsequent assessment year, *i.e.*, 1987-88, the purchases from these very parties stood accepted by the Department to a very substantial extent. The Tribunal, as a matter of fact, noticed that no sale invoices were found to be undervalued or the purchases inflated, yet the extraordinary profit in respect of goods sold to M/s. Mazagoan Dock Ltd., Bombay, and as recorded in the books of account which ought to have been taken favourably qua the assessee, was considered "adverse" by the Assessing Officer by adopting an erroneous approach. The Tribunal also affirmed the conclusion drawn by the Commissioner of Income-tax (Appeals) that M/s. Kohinoor Enterprises and M/s. Swami Enterprises are existing parties doing business of scrap metal and had vast financial resources at their disposal. Similar conclusion was drawn by it in respect of M/s. S.P. Metal Works and M/s. A.S. Metal Company also. The assessee's contention that out of total purchases of non-ferrous metal of Rs. 2.44 crores, the Assessing Officer had treated purchases worth Rs. 1.49 crores only as bogus and it was impossible to manufacture the goods shown to have been manufactured by it out of the remaining purchases if the Assessing Officer's conclusion is accepted, also found favour with the Tribunal. In our view, this is simply a finding of fact based upon appreciation of the material on record and, thus, hardly gives rise to any question of law.

10. That once the purchases under Vat, and sales in IT proceedings , have been accepted in the hands of the assessee , and sale in the hands of other including

Madan Lal Pahuja , have been accepted , no addition can be made by the assessee officer.

11. However, the Ld. CIT(A) upheld the addition on account of bogus purchases, by observing as under: -

“Information is available on 'record with the AO from Investigation Wing of the Department regarding bogus bills issued by Shri Madan Lal Pahuja; who was operating a number of concerns for this purpose. A statement of Shri Madan. Lal Pahuja was recorded ' on 07.01.2015 by, the ADIT(Inv.), Ludhiana wherein he confirmed that, he along with hi's family, members were providing 'bogus bills of sales/purchases to various patties on commission basis and were operating seven firms for this purpose. It was also admitted that actually no physical transactions of sale/purchase took place for this purpose and only paper bills were prvided.

4.13 It is' seen from the record that appellant has not denied having made purchases from these four concerns mentioned above in the year under consideration, which have been operated by' Shri Madan Lai Pahuja. The appellant has vehemently submitted that purchases made froth these four concerns are genuine and duly supported with all supporting. evidence in the form of transport receipts, VAT payment etc. It is submitted that payments for these purchases have been made by cheque and therefore, these purchases have to be accepted as such. It is submitted that AO has not provided an

opportunity of cross' examination of Shri Madan LalPahuja, on whose statement reliance has been placed for malcing addition on this account.

4.14 The primary issue for consideration is with regard to the genuineness of purchases made from the above mentioned four parties by the appellant, the primary onus for which lies upon the appellant to substantiate. The appellant has expressed inability to do so and submitted that there was no physical contact with the seller of goods. It is stated that no transactions of purchases have been made in the last few years from the said party. The, appellant, on being confronted by the. AO with the statement recorded by the ADIT(Inv.), Ludhiana has still reiterated the contentions that purchases made are genuine as all supporting papers are there. The appellant has also stated that sales have been, accepted along with closing stock and therefore, purchases cannot be treated as bogus.

4.15 I find that AO has issued notice to Shri Madan Lal Pahuja'u/s 131 of the IT Act .on account of inability of the appellant to produce him for substantiating the claim of purchases made from that party. Shri Madan Lal Pahuja failed to attend the proceedings on account of his medical condition. The appellant has also failed to produce him even in the course of remand proceedings to substantiate its claim of. purchases made from him or from concerns operated by him or his' family, members.

4.16 Having considered the material available on record, I find that menace of bogus bills being obtained by the business to reduce its taxable income is prevalent and is duly supported with all the paper evidence in the form of transport receipt, payment etc. Further, these transactions are routed through the banking channels to give them the colour of legitimacy. It is seen from the record that no evidence has been filed by the appellant either at the stage of assessment or in the course of present proceedings to counter the statement of Madan Lal Pahuja himself, who was operating these concerns only for providing paper entities.

4.17 It is also seen that the claim of these transactions being supported with transport receipts stands demolished by the AO, who, has made enquiries on this issue and findings of the same' have been stated in, Para 4 (page 2-3) of the assessment order. It is seen from the same that the appellant could only give details of few transport bills (less than 5 out of 33 bills) and vehicle numbers given on those transport receipts were found by the AO to be that of motor cycle, motor car etc. The letters issued by the AG to those parties have also returned back un-served and therefore, the genuineness of their claims cannot be accepted.

4.18 It is also observed that a criminal case has been filed by the Police Authorities. on the complaint registered, against Shri Madan Lal Pahuja for paper/bogus concerns operated by him in his name or in the name of his family members for the purposes of providing bills.. The criminal case. is

pending before the trial court. The enquiries made from the bank ,account 'of Shri Madan Lal Pahuja also reveal that cash is withdrawn 'on the same date or next date of deposition of cheque in the account.

4.19 This, based on the material available on record, 'it is clear that the person who has issued the bills to the appellant did not have either the capacity to produce or purchase that material from the market. Further, the transport receipts could not be provided and few receipts which were produced have 'been found to be of vehicles : 'which cannot be used for transporting material. The appellant has failed to produce the person with whom the transactions of 'more. than Rs. .4crore have been made during the year which is about, 10% of the total purchases declared for the period under consideration. The appellant has also failed to "produce any other person who was intermediary in this transaction of, purchases. In either case, the so called seller himself has denied having sold any material, therefore, the issue for consideration is whether these purchases have to be accepted on the, ground that by treating them as bogus the GP rate would increase to 10%, which is far' more 'than what has been declared by the appellant over a period of time.

4.20 It is well known that in the present times, all' economic frauds take place through the banking channels and therefore, the umbrage taken by the appellant that payments have been made through cheques 'and VAT has been paid cannot be a sufficient defense for treating these transactions as genuine. Also the fact that GP rate declared after treating these transactions as bogus

would increase cannot be a sufficient ground for accepting these transactions as genuine. Accordingly, I hold that AO was justified in ,treating these transactions of purchases amounting to Rs. 4,26,93,470 as bogus, in .the absence of any evidence being produced by theappellant to prove the genuineness.

5. In the result, appeal is dismissed.”

12. Feeling aggrieved by the order passed by the CIT(A), the assessee is in appeal before us on the ground mentioned hereinabove. The Ld. AR for the assessee had made elaborate submissions on aspect of legal issue of issuance of notice u/s 148 and on factual material in respect of alleged bogus purchases being made from the parties. The Ld. AR submitted that that the reopening u/s 148 is bad in law and has raised certain legal aspects which are as under:

I. No evidence available with the department at the time of recording of reasons. The only information available with the department was the stand-alone statement of Madan Lal Pahuja as discussed in para 1.7 above. Your Honor will find that there was no evidence available with the department at the time of recording of reasons, not even the statement of Madan Lal Pahuja and as such, there was no tangible material available with the department. This statement was not quoted in the reasons recorded and as such, it can be presumed that the statement was not available with the department at the time of recording of reasons. The copy of reason recorded is enclosed at page no. 59-60 and the copy of statement of Madan Lal Pahuja is enclosed at page no.171-174. Furthermore, during assessment framed u/s 143(3) the appellant

has furnished complete details and as such, it is a change of opinion considering the fact that no adverse evidence was available with the department while framing assessment u/s147. The reliance is being placed upon the following case law along with other case laws enclosed separately **[2010] 187 Taxman 312 SUPREME COURT OF INDIA Commissioner of Income-tax, Delhi v. Kelvinator of India Ltd.] [refer Page 1-3 of case law paper book]**

II. **BORROWED SATISFCATION.**

Since there was no material available with the department, as such, this is a case of borrowed satisfaction and suspicion, particularly considering the facts that Sh. Madan Lal Pahuja has nowhere taken the name of the appellant in the statement. The reliance is being placed upon the following case law along with other case laws enclosed separately (refer page no.4-46 of case law paper book)

[2018] 93 taxmann.com 153 HIGH COURT OF BOMBAY PCIT-5 v. Shodiman Investments (P.) Ltd][**Refer page 4-8of case law paper book**]

IT :Where Assessing Officer had issued a reassessment notice on basis of intimation from DDIT (Inv.) about a particular entity entering into suspicious transactions, this was clearly in breach of settled position in law that re-opening notice has to be issued by Assessing Officer on his own satisfaction and not on borrowed satisfaction

III. **NO REFERENCE TO ANY MATERIAL**

However, in the case of the appellant, neither the statement was made part of the reasons recorded, nor was it supplied to the appellant along with the copy

of reasons. The copy of statement was later provided on 08.12.2017 immediately before the final end of completion of assessment proceedings on 08.12.2017. **However, the department has failed to provide the list of beneficiary parties with whom such paper transactions were made by Madan Lal Pahuja as per Q No. 8 of the statement [relevant page no 173].The appellant has requested vide reply dated 15.12.2017 place at point no 2 Page 175 & 177 but, the same was never provided by the department.** The order disposing of the objections cannot act as a substitute for the reasons to believe. The reliance is being placed upon the following case law along with other case laws enclosed separately (refer page no.47-69 of case law paper book)

Sabh Infrastructure IN THE HIGH COURT OF DELHI AT NEW DELHI, W.P.(C) 1357/2016 [refer Page 7-53]

*17. In the facts of this case, the primary facts have not been shown to be false. The five companies do exist. They did subscribe to the share capital of the Petitioner. They did pay the money to the Petitioner. All the five companies are assessed to tax. These are the primary facts. The reasons to believe rely upon a letter received from the Investigation Wing and Mr. Chaudhary submits that this letter was in fact an investigation report. **The report does not form part of the reasons and neither was it annexed to the reasons. Interestingly, even the counter affidavit is silent as to the material which has not been disclosed by the Petitioner. The counter affidavit merely states that the information was specific and the information would be provided to the Petitioner during the assessment proceedings. Thus, if the Revenue had any basis to show that the***

primary facts were incorrect, the same ought to have been set out in the reasons to believe. That has not been done in the present case.

IV. REASONS TO SUSPECT

The investigation report and the statement of Madan Lal Pahuja (who has not even named the appellant) could give rise to mere suspicion and suspicion howsoever strong, cannot take the form of evidence as reasons to believe particularly **since the list of beneficiaries as submitted by Madan Lal Pahuja at Q No. 8 was never provided to the appellant.** The copy of statement is enclosed at page No. 171-174. The reliance is being placed upon the following case law along with other case laws enclosed separately (refer page no.70-110) **[2015] 57 taxmann.com 355 HIGH COURT OF DELHI Krown Agro Foods (P.) Ltd. V. ACIT, Circle 5(1), New Delhi [refer page no. 70-75 of case law paper book] Section 69A, read with section 147, of the Income-tax Act, 1961 - Unexplained money (Cash) - Assessment year 2012-13 - One of Directors of assessee company namely 'A' was carrying Rs. 5 lakhs from Delhi to Ghaziabad for payment of wages and other normal expenses - 'A' was stopped by UP Police on border of Delhi and said cash was seized - On basis of information received from DDIT (Inv.) Assessing Officer initiated reassessment proceedings for relevant year by recording reason that information so received needed to be examined and creditworthiness of assessee had to be proved beyond doubt to accept claim of its director that money seized infact belonged to assessee-company - Whether since 'reason to believe' recorded by Assessing Officer did not refer to any material that came to his knowledge whereby it could be**

inferred that he could have formed a reasonable belief that amount in question had escaped assessment, initiation of reassessment proceedings on basis of mere suspicion was not sustainable - Held, yes [Para 14] [In favour of assessee]

V. NO ADVERSE MATERIAL WAS PROVIDED BY THE DEPARTMENT

There is another important aspect which should not be ignored that the statement of madanlalPahuja on 07.01.2015 and thereafter, on 19.08.2015, the business premises of the appellant was surveyed by the department. During survey, various documents, stock, cash and other details were examined by the department and it is pertinent to mention here that even in this marathon exercise, nothing incriminating was found which lead to the conclusion that appellant was indulging in bogus purchases nor any piece of adverse evidence in respect of purchases being made from the alleged parties. It is not the case where something incriminating was found from the premises of the assessee. The whole case is being made by relying upon the statement of Madan lalPahuja. This proves that none of the documents which are stated to be incriminating were available with the AO at the time of initiation of proceedings so as to be satisfied that assessee's income had escaped assessment except the stand alone statement of Madan lalPahuja. . The reliance is being placed upon the following case law along with other case laws enclosed separately (refer page no.111-177)

[2020] 115 taxmann.com 342 IN THE ITAT DELHI BENCH 'A'Agson Global (P.) Ltd. v. ACIT , Central Circle-28, New Delhi [refer Page No. 111-175 of case law paper book]

He further submitted that the statement recorded u/s 132 (4) do not constitute any incriminating materials for the purpose of assessment u/s 153A of the income tax act. He submitted that the statement of the managing director and the statement of Mr. Praveen Agarwal recorded u/s 132 (4) of the act. With respect to the evidentiary value of the statement recorded u/s 132 (4) with respect to assessment in search cases he referred to the decision of the honourable Delhi High Court in CIT vs. HarjeevAgrwal (2016) 290 CTR 263 (Delhi) wherein it has been held that evidence found as a result of search would not take within its sweep statements recorded during search and seizure operations unless they are related to any material found during the course of search. He therefore submitted that there should be a nexus between the statement recorded u/s 132 (4) and evidence/material which are incriminating in nature found during the search.To support his this proposition he relied of the decision of the honourable Delhi High Court in case of principal Commissioner of income tax vs. Best infrastructure (India) private limited wherein it has been held that the statements recorded u/s 132 (4) do not by themselves constitute incriminating material for the purpose of assessment u/s 153A of the act. He further relied upon the decision of the coordinate bench in Brahmputra <http://itatonline.org> Agson Global Pvt. Ltd Vs. ACIT, ITA No. 3741to 3746/Del/2019 (assessee) ITA No. 5264 to 5269/Del/2019 (Revenue) (Assessment Year: 2012-13 to 2017-18) Page | 17

Finlease (private) Ltd in ITA number 3332/del/2017 dated 29/12/2017 to support his contention. He even otherwise submitted that that the managing director of the company retracted his statement immediately on 24/3/2017. He referred to the copy of retraction placed at page number 169 – 171 of the paper book number 1. He further referred to the circular number F. NO. 286/2/2003 – IT (INV) dated 10/3/2003 and 286/98/2013 – IT dated 18/12/2014. He further referred to the decision of the honourable Gujarat High Court in principal Commissioner of income tax vs. Sayumya construction private Ltd (2016) 387 ITR 529 (Gujarat).

2019] 110 Taxmann.com 64 (SC)

SUPREME COURT OF INDIA Commissioner of Income Tax-7, New Delhi v. Odeon Builders (P.) Ltd [refer Page no 176-177of case law paper book]

Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Bogus purchase) - Certain portion of purchases made by assessee was disallowed - Commissioner (Appeals) found that entire disallowance was based on third party information gathered by Investigation Wing of Department, which had not been independently subjected to further verification by Assessing Officer and he had not provided copy of such statements to appellant, thus, denying opportunity of cross examination to appellant, who on other hand, had prima facie discharged initial burden of substantiating purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and fact of payment through cheques, VAT Registration of sellers and their Income-tax Return - He held

that purchases made by appellant was acceptable and disallowance was to be deleted - Tribunal dismissed revenue's appeal - High Court affirmed judgments of Commissioner (Appeals) and Tribunal being concurrent factual findings - Whether no substantial question of law arose from impugned order of Tribunal - Held, yes [Para 4] [In favour of assessee]

VI. GENERAL STATEMENT CANNOT BE RELIED UPON

In the statement provided after the reasons recorded, the name of the appellant does not appear, and as such, the statement can at the most be said to be general statement. The general statement cannot be relied upon particularly considering the fact when the name of the appellant has not been specifically taken in the confession. **Furthermore, the statement of Jatinder Kumar and other persons were never recorded and as such, by no stretch of imagination, it can be assumed that purchases made from him were bogus.** In this regard, reliance is being placed upon the following case law and other case law enclosed separately in Paper book 2 at page no.178-202 of case law paper book

[1976] 103 ITR 437 (SC) SUPREME COURT OF INDIA Income-tax Officer v. Lakhmani Mewal Das [Refer Page no. 178-186 of case law paper book]

Section 147 of the Income-tax Act, 1961 [Corresponding to section 34(1) of Indian Income-tax Act, 1922] - Income escaping assessment - Illustrations - Assessment year 1958-59 - Whether reasons for formation of belief contemplated by section 147(a) for reopening of assessment must have rational connection with or relevant bearing on formation of belief, and rational connection postulates that there must be direct nexus or live link between

material coming to Income-tax Officer's notice and formation of his belief that there has been escapement of assessee's income from assessment in particular year because of his failure to disclose fully and truly all material facts - Held, yes - Whether duty cast upon assessee is to make true and full disclosure of primary facts at time original assessment, and it is for Income-tax Officer to draw correct inference from primary facts - Held, yes - Whether if Income-tax Officer draws inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not justify initiation of action for reopening assessment - Held, yes - ITO completed original assessment by allowing deduction of interest paid to certain creditors - Subsequently, he reopened assessment for reasons recorded in report submitted to Commissioner for obtaining sanction under section 147(a) that one creditors had confessed that he was doing only name lending and that other creditors were only name lenders - There was no material to show that confession made by said creditor related to loan to assessee and not to some one else and also that said confession related to period which was subject matter of assessment - There was also no material to show that other creditors were name lenders - Whether live link or close nexus which should be there between material before Income-tax Officer and belief which he was to form regarding escapement of income of assessee from assessment because of latter's failure or omission to disclose fully and truly all material facts was missing in case - Held, yes - Whether, thus, High court was not in error in holding that said material could not have led to formation of belief that income of assessee had

assessment because of his failure or omission to disclose fully and truly all material facts - Held, yes

Further reliance is being placed upon the case of **SheoNath Singh v. AAC (1971) 82 ITR 147** in which it has been stated that an assessment cannot be re-opened on the basis of mere suspicion. And as sales tax department themselves listed such dealer as suspicious dealer and not confirmed hawala dealer therefore, proceeding based solely on the basis of information from Sale Tax department cannot be the

VII. NO CROSS EXAMINATION ALLOWED

It is further pertinent to mention here that, no inference based upon statement of third persons recorded by the department, can be drawn before giving the opportunity of cross examination to the appellant[**The appellant had requested for cross examination vide reply dated 15.12.2017 at point no 1 relevant page 175**]. However, in the present case, the appellant was not provided with the opportunity to cross examine Sh. Madan LalPhuja and as such, the statement cannot be relied upon. In this regard, reliance is being placed upon the following case law and other case law enclosed separately in Paper book 2 at page no.203-307 of case law paper book

In view of the case **[2019] 102 taxmann.com 229 (Delhi – Trib.) IN THE ITAT DELHI BENCH 'SMC'Amitabh Bansal v.Income Tax Officer, Ward 46(4), New Delhi**, [Refer page no. 203-227 of case law paper book] it can be said that the opportunity of cross examination is the right of the appellant and the department cannot proceed to make additions without granting the same.

“IT: Where revenue relies on statements of certain persons to implicate an assessee, principles of cross-examination have to be invariably followed as not providing opportunity to cross-examine is violative of principles of natural justice

9. Keeping in view of the facts and circumstances of the case and respectfully following and applying principles in aforesaid Hon'ble Supreme Court, Hon'ble High Court and this Tribunal rulings, second issue framed by me above **on consequential impact of lack of cross-examination and violation of principle of natural justice, I have no hesitation to accept the plea of Ld AR that lack of cross-examination and violation of principle of natural justice results in total nullity of the entire addition, hence, the additions in dispute are hereby deleted.”**

IX NO APPLICATION OF MIND

Even in the statement, Mr. Madan Lal Pahuja has stated that he and his relatives were the proprietors of firms as per Question No 6 (page No. 171-174). The department has not specified all the proprietors of the said firms and the stand-alone statement of Madan Lal Pahuja cannot bind another person.**The total amount with regard to three parties mentioned in the reasons recorded, works out to Rs. 3.28 Cr instead of 4.28 Cr mentioned by the AO. The approval u/s 151 has also been given based on same reasons as forwarded by the AO to the Pr. CIT on 29.03. 2017. This proves that the reasons were recorded without application of mind. Reliance is being placed upon case laws enclosed at Page no. 308-353 of case law paper book**

13. The Ld. AR further submitted that there are certain factual points which are very much necessary before deciding the issue of bogus purchase particularly considering the fact that the sale tax authority based on whom the whole allegation has been made, has accepted the sales made by Mr. madanlalPahuja whose statement was recorded by the investigation wing. The Ld. AR also submitted that the income tax assessment in Mr. Pahuja was also completed by the income tax department and where the sales made by him have been accepted. He further submitted that the sale tax assessment in the case of appellant was also completed. As such, the whole allegation against the appellant is totally based upon surmises and conjectures. The following factual aspects were brought to the knowledge of the bench by the Id. AR for the assessee:-

A) EXPLANATION IN RESPECT OF FIR RELIED UPON BY THE DEPARTMENT

The AO has placed reliance on one FIR registered by Sale tax authorities which was registered in 2009 and thereafter even the sale tax department has accepted the purchase made by the appellant from the above concern. **It is important to mention here that the assessment in the case of the appellant has been framed u/s 29 of Punjab VAT Act 2005 dated 08.05.2012 which is much after the period of 3 years from launching of FIR page no. (243-244). Furthermore, the assessment in the case of Shiv bholeKirpa traders has also been framed by VAT department and vide order dated 01.03.2012[Refer Page No. 245] and which is also after the date of FIR. It is important to highlight that FIR also does not contain the name of the appellant.**

B)EXPLANATION IN RESPECT OF 7 SAMPLE VEHICLE REGISTRATION STATUSRELIED UPON BY THE DEPARTMENT

The whole case has been made by considering the statement of Madan LalPahuja and relying upon 7 sample Vehicle registration status and ignoring the submissions of the assessee that the goods were purchased on FOR basis. It has already been clarified that the goods were delivered at the end of supplier and the truck number given on the bills were not checked precisely, as, the delivery was on FOR basis. The department has been able to provide only 7 copies out of 33 bills and that too cannot be relied upon considering the facts that parties in question are registered with the VAT Authorities and that payments have been made through cheques except for the fact that there are some non-transport trucks. **The appellant has specifically mentioned that the goods were purchased through broker Ankur Garg, whose name has not been mentioned at Q No. 8 in the statement (at Page No. 173), as otherwise being relied upon by the department. Therefore, at the best, it can be domain of suspicion which cannot be converted into a belief that no goods were purchased. Furthermore, we are also enclosing herewith the RC status of other vehicle numbers as mentioned in the purchase bills not considered by the department which clearly states that the vehicles are Goods Carriers [Refer page no. 246-251]. Therefore, it is a clear case of cherry picking by the department. The total of all the 7 bills as relied upon by the department works out to Rs.5372955 as per the list enclosed at page no.252**

C) QUANTITATIVE TALLY

The department has totally ignored the quantitative details (page no.10 and 164) as submitted by the appellant and has not even pointed out any defect and as such, without there being purchases, there cannot be any sale. The complete stock tally is enclosed at Page No. 6. In this regard reliance is being placed on the case of [2013] 35 taxmann. com 384 (Bombay) HIGH COURT OF BOMBAY CIT-1, Mumbai v.NikunjEximp Enterprises (P.) Ltd. **[Refer page No. 354-357 relevant page no.388-389 of case law paper book]**

D) SALES NOT DOUBTED

The department has not doubted the sales and as such, the purchases cannot be said to be bogus. In this regard reliance is being placed on the case of [2018] 94 taxmann. com 324 HIGH COURT OF GUJARAT PCIT, Surat-I v. Teju Rohit kumar Kapadia. In this judgment, the court has held that, where, **the sales are accepted by the department against the information received from the investigation Wing regarding alleged bogus purchases and there is no evidence, in such a case, no addition can be made. Importantly, the appeal filed by the revenue was dismissed vide order dated 04.05.2018**

That the sales made by the appellant were subject to sale tax and the department has allowed the credit of input in respect of those purchases. Therefore, it is not possible for one coin to have same sides. **It is very important to mention here that the assessment in the case of the appellant has been framed u/s 29 of Punjab VAT Act 2005 dated 08.05.2012 in which the input credit for purchases made from the above parties has been**

allowed [refer page no. 243] [Case laws enclosed at page no. 388-415 of case law paper book].

E) Manufacturing results accepted

It is mater of recode that the manufacturing results were subject to excise audit by the excise department and no discrepancy was pointed neither by excise department and nor by income tax department as such averments of the AO needs to be negated. (Please refer page no 284-286.

F) ASSESSMENT IN THE CASE OF MADAN LAL PAHUJA U/S 147

It is pertinent to mention here that the assessment in the case of madanlalPahuja (whose statement has been relied upon by the department), has been concluded by the department u/s 143(3) r.w.s 147 by applying GP of 1.2% (as per the market rate) on total turnover of Rs. 12.43 crores [Refer Page no. 223-225]. Therefore, this is not the case where the assessment in the case of the parties from whom the purchases have been made has not been made.

The income tax returns of Madan Lal Pahuja has been framed u/s 147 r.w.s 143(3) in which although books of accounts have been rejected, but, sales have been accepted and profit has been estimated on such sales. The department has not accepted the statement of Madan Lal Pahuja in his case.

G) The allegation of the Ld. AO that the goods purchased against alleged bogus billing were consumed in manufacturing is baseless, since, quantitative tally of manufacturing goods was also submitted and no defect whatsoever was pointed out. **That the total sales of trading goods made during the year were to the tune of Rs. 10.99 Cr and the Ld. AO has made addition to the**

tune of Rs. 4.28 Cr against the said sales by relying upon the statement of Sh. Madan LalPahuja. Even for the sake of argument, the stand of the department is taken as correct, then also, the revised gross profit works out to 46.22% which, by no stretch of imagination is feasible in this trade.

G)PURCHASES MADE FROM THE ALLEGED PARTIES HAVE BEEN ACCEPTED IN THE FY 2010-11 and F.Y.2011-12 I.E. AY 2011-12 and A.Y.2012-13 BY FRAMING ASSESSMENT U/S 143(3)

The department has accepted the purchases made in subsequent years from the same parties. During the assessment proceedings, **the supplier accounts for the later years were also provided and the same have not been disputed by the department. In this regard, the copy of assessment order is being enclosed herewith at Page no. 232-242 and 287-292 for your ready reference. Furthermore, these facts were also brought to the knowledge of CIT (A) through addendum dated 15.10.2018 enclosed at page no. 230-231** (Relevant page no. 279 of CIT(appeal). In this regard, reliance is being placed upon the judgment of high Court of Punjab and Haryana in the case of leader valves (P.) ltd **[Case law enclosed at page no. 416-418 of case law paper book]** in which it has been stated that purchases made from parties could not be termed as bogus if the same have been accepted in the subsequent years.

The relevant text is being reproduced for your ready reference: -

Section 145 of the Income-tax Act, 1961 – Method of accounting – Rejection of accounts – Assessment year 1986-87 – Commissioner (Appeals) deleted additions made by Assessing Officer on account of bogus purchases from

seven parties as also addition in trading account besides allowing triple shift allowance on machinery etc. – Tribunal concurred with analysis and conclusions drawn by Commissioner (Appeals) on appreciation of material on record, after taking notice of fact that trading results of assessee had all along been accepted and purchases of scrap from seven parties could also be not termed as bogus for reason that in subsequent assessment year purchases from those very parties stood accepted by department to a very substantial extent – Tribunal also took notice of Revenue’s contradictory stand in as much as firstly specific additions were made in assessment on account of alleged bogus purchases and then assessee’s books were rejected on ground that those were not verifiable, but adjustment of bogus purchases was made while working out gross profits and that too on basis of ‘sales version’ in those very books though with a slight modification – Whether brief capitulation of findings of fact returned by Tribunal led to an irresistible conclusion that these were pure findings of fact giving rise to no question of law – Held, yes

5. ENTIRE PURCHASES CANNOT BE ADDED

5.1 Even otherwise, entire purchases cannot be added and only GP element can be taxed, particularly in a situation where the appellant has submitted stock tally, VAT returns, purchase bills and sales have been accepted by the department, without pointing out any defects.

In this regard reliance is being placed on the case of [2013] 40 taxmann.com 494 HIGH COURT OF GUJARAT Commissioner of Income-tax v. Bholanath Poly

Fab (P.) Ltd. **[refer page No. 419-489 relevant page no 419-421 of case law paper book]**

The account books of the assessee were never rejected by the Assessing officer, In the case of CIT v Bholanath Poly Fab Pvt Ltd (2013) 355 ITR 290 (Gujarat), the Hon'ble High Court held as under:-

“5. Having come to such a conclusion, however, the Tribunal was of the opinion that the purchases may have been made from bogus parties, nevertheless, the purchases themselves were not bogus. The Tribunal adverted to the facts and data on record and came to the conclusion that the entire quantity of opening stock, purchases and the quantity manufactured during the year under consideration were sold by the assessee. Therefore, the purchases of the entire 1,02,514 meters of cloth were sold during the year under consideration. The Tribunal, therefore, accepted the assessee's contention that the finished goods were purchased by the assessee, may be not from the parties shown in the accounts, but from other sources. In that view of the matter, the Tribunal was of the opinion that not the entire amount, but the profit margin embedded in such amount would be subjected to tax. The Tribunal relied on its earlier decision in the case of Sanket Steel Traders and also made reference to the Tribunal's decision in the case of Vijay Proteins Ltd. v. Asst. CIT [1996] 58 ITD 428(Ahd).

Section 69 of the Income-tax Act, 1961 - Undisclosed investments [Bogus purchases] - Assessment year 2005-06 - Assessee was engaged in business of trading in finished fabrics - Assessing Officer found that concerned parties from whom material was purchased were not found at their addresses and

held that purchases made by assessee were bogus - Accordingly, he made disallowance - Tribunal found that though purchases were made from bogus parties, but purchases themselves were not bogus as entire quantity of stock was sold by assessee and held that only profit margin embedded in such purchases would be subjected to tax and not entire purchases - Whether no illegality was committed by Tribunal - Held, yes [Para 6] [In favour of assessee] 5.2 Furthermore, since all the payments have been made by cheque, as such, in view of Hon'ble Calcutta High Court, the purchases cannot be held to be bogus.

In this regard reliance is being placed on the case of 2014] 50 taxmann.com 190 (Calcutta) HIGH COURT OF CALCUTTA Commissioner of Income-tax, Kolkata-XII v. Manish Enterprises SOUMITRA PAL AND ARINDAM SINHA [Relevant Page no. 422-425 of case law paper book].

Section 69 of the Income-tax Act, 1961 - Unexplained investments (Undisclosed cash purchases) - Assessing Officer made addition on account of undisclosed cash purchases and bogus sundry creditors - However, details of ledger account and copies of bill clearly indicated that purchases were made from these parties and payments were made through bank - All payments were made by account payee cheque which were duly debited in assessee's bank account and credited in bank account of suppliers - Whether since assessee had made purchases in actual which had been paid by

account payee cheques, no disallowance could be made - Held, yes [Paras 5 and 6] [In favour of assessee]

6. NON-APPEARANCE OF CREDITORS

The non-appearance of creditors cannot lead to the conclusion that the purchases are bogus. In this regard reliance is being placed on the case of Vishnu Prasad Vs DCIT (ITAT Jaipur) ITA No. 1503/JP/2018 Date of Judgement/ Order: 15/02/2021. **[Refer Page No. 490-510 of case law paper book]**

14. The Id. DR placed reliance upon the assessment order. She contended that the Id. CIT(A) has rightly confirmed the addition of ₹ 4.26 cr which was made by the AO on account of unverifiable purchases. However, after going through the paper book and the evidence of assessment order, sale tax assessment order of Madan LalPahuja and considering the sale tax assessment order of the appellant; the DR contended that the AR of the appellant was not able to substantiate the defects to the tune of Rs. 0.53 Cr out of total alleged bogus purchases of Rs. 4.26 Cr as pointed out by the LD. AO.

15. The Id. AR for the appellant contended that the department has even accepted the purchases made from the same parties by completing assessment u/s 143(3) for AY 2011-12 and 2012-13.

16. In this regard, the AR relied upon the judgment of Punjab & Haryana jurisdictional High Court in the case of Leader Valves [2006] 285 ITR 435 (PUNJ. & HAR.). Furthermore, the Ld. AR has reiterated the facts that the AO's reliance upon

the FIR logged on 13.09.2009 by sale tax authority is totally baseless, particularly considering the fact that the complainant being sale tax department has already completed VAT assessment in the case of Madan Lal Pahuja after a period of 3 years i.e. 01.03.2012. The Ld. AR also submitted copies from Vahan Site in respect of truck no as mentioned in 33 bills, which were not considered by the AO and has pointed that the AO has adopted approach of cherry picking. Therefore, addition on the basis of mere statement does not carry any weight age in the eyes of law.

17. We have considered the rival contention and perused the material available on record, including the judgments cited at bar during the hearing by both parties. Admittedly, the reopening in the present case was made by the assessing officer, pursuant to the report received from the ADIT(Investigation), Ludhiyana. Based on that report, the reasons to reopen were recorded on 22/3/2017. The reasons recorded specifically mentioned that the information was received from the investigation wing, Ludhiana mentioning that Madan Lal Pahuja had issued bogus purchase bills during the F.Y.2009-10. The investigation wing recorded the statement of Madan Lal Pahuja on 7.1.2015 wherein he had admitted that he had provided bogus bills to the assessee company through his HUF propriety concern and other concern namely M/s Lovy Steel & Allied Industries, Mandi Gobindgarh. It was further mentioned in the reasons to reopen that the concerns of Madan Lal Pahuja are no more operational since 1 April 2014. It was further mentioned that the another person namely Sh. Jatinder Kumar Proprietary of M/s Shree Nath Ispat Udyog, was also providing the bogus purchase bills to the assessee, however Sh. Jatinder Kumar Proprietary, was not traceable. It was also noted down by the reasons to believe

that he had made independent verification from the assessment record of the assessee for the assessment year 2010-11, and mentioned that the assessee had received bogus purchase bills Rs. 2.06crore and Rs 1.05 crore from M/s Shree Nath Ispat Udyog, Mandi Gobindgarh and M/s Shiv BholeKirpa Traders, Ludhiana.

17. In order to decide, the issue of legality of reopening by the AO, we consider it essential to narrate the sequence of events in the present case, as follows:

Date	Event
13.9.2009	A FIR was registered by AETC Ludhiana against Madan Lal Pahuja, alleging providing bogus sale bills
1.3.2012	VAT assessment was completed for the Financial Year 2009-10 vide order dated 01-03-12 in hands of Ms Shiv BholeKirpa traders ,HUF concern of Madan Lal Pahuja
8.5.2012	VAT assessment in the case of appellant was completed in the hands of the assessee , wherein the purchase made by the assessee were accepted by the VAT department -05-2012
18.6.2012	Assessment order was passed in the case of assessee under section 143(3) of the Act for AY 2010-11.
4.6.2013	Assessment order was passed in the case of assessee under section 143(3) of the Act for AY 2011-12.
1.4.2014	Concerns of Madan Lal Pahuja are no more operational, as per the statement recorded by the Investigation wing .
07.01.2015	The statement of Sh Madan Lal Pahuja was recorded by Investigation wing of the Revenue .
19.8.2015	Survey was carried out in the premises of the assessee,

	however nothing incriminating material was found in the premises .			
	Approval was granted by the official in respect to ----- concerns only			
22.3.2017	Reasons to reopen were issued to the assessee in respect to <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Sh. Madan Lal Pahuja HUF Prop. M/s Shiv BholeKirpaTrad ,Shirnlapuri, Ludhiana</td> </tr> <tr> <td style="padding: 2px;">M/s Lovy Steel & Allied Industries, Dr. Bansal Clinic, sector-3C, Mandi Gobindgarh</td> </tr> <tr> <td style="padding: 2px;">Sh. Jatinder Kumar Prop. M/s Shree Nath Ispat Udyog, Bank of India Road, Mandi Gobindgarh</td> </tr> </table>	Sh. Madan Lal Pahuja HUF Prop. M/s Shiv BholeKirpaTrad ,Shirnlapuri, Ludhiana	M/s Lovy Steel & Allied Industries, Dr. Bansal Clinic, sector-3C, Mandi Gobindgarh	Sh. Jatinder Kumar Prop. M/s Shree Nath Ispat Udyog, Bank of India Road, Mandi Gobindgarh
Sh. Madan Lal Pahuja HUF Prop. M/s Shiv BholeKirpaTrad ,Shirnlapuri, Ludhiana				
M/s Lovy Steel & Allied Industries, Dr. Bansal Clinic, sector-3C, Mandi Gobindgarh				
Sh. Jatinder Kumar Prop. M/s Shree Nath Ispat Udyog, Bank of India Road, Mandi Gobindgarh				
31.05.2017	Notice under section 142(1) was issued to assessee asking to explain its transactions with 3 entities namely M/s Shiv Bhole Kirpa Traders, M/s Lovy Steel & Allied Industries and M/s Shree Nath Ispat			
8.12.2017	Statement of Madan Lal Pahuja recorded by Investigation wing was provided by the AO ; however, cross examination was never provided to assessee despite request made vide letter dated 15.12.2017.]			
19.12.2017	A notice u/s 142(1) dated 19.12.2017 was issued to the assessee, file complete details of the purchases made from the fourth firm M/s Shree Radhey Steel & Alloys, a the AO failed to mention it in the reasons to reopen or notice issued under section 142(1) 31.05.2017 In response to the above, the assessee vide reply dated 26.12.2017 filed Copy of account of the said party, copies of bills issued by it and the copy of bank account through which payment was made to it.			
20-12-2017	Sales were accepted in the hands of the Sh Madan Lal Pahuja in the Assessment Order passed by the assessing officer under section 143(3) read with 147 of the Act .			
26-12-2017	Assessment order was passed in the case of assessee.			

18. From the reasons to reopen, it is clear that the whole allegation was based upon the statement of Madan Lal Pahujarecorded by the Investigation wing on 7.1.2015. To our surprise, the statements of Jatinder kumar prop. Shree Nath Ispatudhyog and proprietor of M/S Lovy Steel & Allied Industries were never recorded by the AO or the investigation wing. The allegation of bogus purchases from the said two parties were based upon the statement of Madan Lal Pahuja who had made the transactions with them.

19. The Assessing Officer has formed his opinion for reopening the assessment on the basis of the report of the investigating wing of the revenue. During the recording of the statement of Shri Madan Lal Pahuja, the investigating wing observed that he was in to the activity of providing the bogus purchase invoices to various persons. While recording the reasons to reopen the assessment, the Assessing Officer has only mentioned the details of the statement recorded by the investigating wing. He had merely relied upon the report of the investigating wing. Further, the Assessing Officer has not provided the copy of the statement of Shri Madan Lal Pahuja recorded on 07.01.2015 to the Assessee. In our view, it is essential for the Assessing Officer to provide the copy of the foundation fact ,namely the statement of Shri Madan Lal Pahuja,to the Assessee at the time of providing reasons for reopen the assessment. The same has not been done by the Assessing Officer, which is contrary to the law laid down by Delhi High Court in the matter of Sabh Infrastructure IN THE HIGH COURT OF DELHI AT NEW DELHI, W.P.(C) 1357/2016. Further, from the reading of the answer given by Shri Madan Lal Pahuja in response to **question no. 6 and 8 (APB, Pg. 173) it** is clear that the name of the Assessee have not been mentioned by

the said Shri Madan Lal Pahuja, as beneficiary party to whom the alleged bogus bills were given by him. He had merely mentioned the name of Brokers with whom, he was carrying the transactions. However there is no evidence to link, the brokers, assessee and MrPhauja on record. Further there is no evidence brought to record, that the assessee had received bogus bills from the entities of Phauja. Moreover he had not stated that family concerns of the Phauja were into providing the bogus bills. We are reproducing the Question no 6 and 8 and answers given by MrPhauja, which are as under :-

Q-6 Please give name of concerns/firms in which you or any of your family members are either partner/director /proprietor.

Ans. As far as I remember I and my family members are proprietor of the following concerns:-

- i M/s Shiv BholeKirpa Traders, Shimlapur, Ludhiana.*
- ii. M/s Shree Radhey Steel & Alloys, Jasran Road, Mandi Gobindgarh.*
- iii. M/s Lovy Steel & Allied Industries Dr. Bansal Clinic, Sector 3-C, Mandi Gobindgarh.*
- iv. M/s Shree Nath Ispat Udyog, Bank of India Road, Mandi Gobindgarh.*
- v. M/s Sunder Sales Corporation, Preet Nagar, Shimlapuri, Ludhiana.*
- vi. M/s Kanak Overseas, Post Office Road, Mandi Gobindgarh.*
- vii. M/s Gitansh International, Post Office Road, Mandi Gobindgarh.*

All the above mentioned concerns are since closed. There is no operation in all these concerns since 01.04.2014. As a proof thereof, I am submitting herewith TIN status of some of the firms.

Q- 7 Please provide PAN of the all the above-mentioned firms.

Ans. I am not able to recollect the PAN of the above mentined firms, moreover, I am not in contact with any of the firms.

Q No. 8 Please tell on whose behalf you were doing paper transactions with the parties in all the concerns?

Ans. I was doing the work on behalf of the following brokers:

- i. Sh. Parmod Kumar, Mandi Gobindgarh.*
- ii. Sh. Gurjeet Singh, Mandi Gobindgarh.*
- iii. Sh. Anuj Kumar, Mandi Gobindgarh.*
- iv. Sh. Sumit Kumar, Khanna.*
- v. Sh. Manoj Kumar, Khanna.*
- vi. Sh. Arvind Kumar, Mandi Gobindgarh.*

20. We are of the considered view that the Assessing Officer was duty bound to record his independent satisfaction to arrive at prima facie satisfaction that there is escapement of income during the assessment year under consideration. The reasons to reopen reproduced at page 5 above clearly show that the Assessing Officer has merely relied upon the report of the investigating wing whereas, it is necessary for the Assessing Officer to apply his mind on the information received from the investigating wing. But, the AO did not apply his mind to arrive at an independent satisfaction that there was escapement of income. Firstly, that the statement of Shri Madan Lal Pahuja is silent about giving any benefit to the Assessee(answer to question no 8 at page 173) , and Secondly, the Assessing Officer, before initiation the proceedings of reopening, was required to examine the record like VAT Assessment completed in the case of Shri Madan Lal Pahuja on 01.03.2012, whereby the VAT Department accepted the sales made by Shri Madan Lal Pahuja to the Assessee therein. Further, in the assessment under VAT for the Assessee, the VAT Department has accepted the purchases made by the Assessee

from Shri Madan Lal Pahuja. Once the sale by Shri Madan Lal Pahuja made to the Assessee and purchases made by the Assessee from Shri Madan Lal Pahuja were accepted, even after registration of FIR on 13.09.2009 against Shri Madan Lal Pahuja, then the non-examination of the Assessment Orders passed by VAT clearly shows the non-applicability of mind by the Assessing Officer before issuing the reasons to reopen. Further, the Assessee has also placed on record the Assessment Order passed in the case of the Assessee for the assessment year 2010-11 which was passed on 18.06.2012 and thereafter the assessment year for 2011-12 which was passed on 04.06.2013. The consistent stand of the Assessee in the reply submitted by him in response to the reasons to reopen to AO, was that the Assessee has been receiving the goods from the parties described above and purchases accepted by the Assessing Officer in the subsequent assessment year i.e. 2011-12. In view of the judgment of the Hon'ble High Court of Punjab & Haryana in the matter of **Leader Valves (P.) Ltd [2006] 285 ITR 435 (PUNJ. & HAR.)**, the additions based on the alleged bogus purchase bill for the assessment year 2010-11 are not sustainable.

21. The aforesaid information was available in the record of the Assessing Officer before issuing the reasons to reopen. However, the Assessing Officer has not applied his mind and had merely relied upon the information received by him from the investigating wing. We may safely rely upon the decision in [2018] 93 taxmann.com 153 HIGH COURT OF BOMBAY PCIT-5 v. Shodiman Investments (P.) Ltd] for this preposition. Further, if we look into the reasons to reopen the assessment, then it is clear that the Assessing Officer had merely relied upon the report of investigating wing and the statement of Shri Madan Lal Pahuja. The

abovesaid information was required to be corroborated and verified by the Assessing Officer as, the information at best can be the reasons to give rise to mere suspicion. However, the reason to suspicion, how so ever strong cannot be part take the character of reason to believe. For the reason to believe it is essential that there should be convincing evidence in possession of the Assessing Officer, which give rise to the prima facie conclusion that there is escapement of income. Admittedly, in the present case, the Assessing Officer completed the regular assessment under scrutiny on 18.06.2012 after examining the books of accounts of the Assessee etc. Quite contrary to this, the Assessing Officer in the reasons to reopen, at page above had mentioned as under:-

“Further, on doing the independent verification of the assessment record of the assessee company for AY 2010-11, it was noticed that the amount of purchases made by the assessee company from M/s Shree Nath Ispat Udyog, Mandi Gobindgarh amounting to Rs. 2.06 crores and from M/s Shiv BholeKirpa Traders, Ludhiana amounting to Rs. 1.05 crores matched with the information received from the office of ADIT (Inv.), Ludhiana.”

22. In our opinion, once the information was available in the assessment record of the Assessee company for the assessment year 2010-11, which was subject matter of scrutiny assessment and on the basis of this information, the assessment was completed and the additions were made. In our opinion, the same information was admitted to be correct by the Assessing Officer in the reasons to reopen as it is matching with the information received from the Investigation wing. In our

considered opinion, once the Assessing Officer formed an opinion on the information available on record and framed the assessment, then the Assessing Officer cannot be permitted to change his opinion based on same information. This is not allowed in view of the decision of the Hon'ble Supreme Court in the matter **[2010] 187 Taxman 312 SUPREME COURT OF INDIA Commissioner of Income-tax, Delhi v. Kelvinator of India Ltd.**]. Therefore, the reopening made by the Assessing Officer cannot be sustained. In view of the above, we are of the opinion that reopening made by the Assessing Officer is required be quashed and accordingly, we quashed the same. Further, the non-application of mind by the Assessing Officer is further discernable mainly from the fact that in the reasons to believe the name of three parties, namely (1) Sh. Madan Lal Pahuja HUF Prop. M/s Shiv Bhole Kirpa Traders, Shirnlapuri, Ludhiana, (2) M/s Lovy Steel & Allied Industries, Dr. Bansal Clinic, sector-3C, Mandi Gobindgarh, (3) Sh. Jatinder Kumar Prop. M/s Shree Nath Ispat Udyog, Bank of India Road, Mandi Gobindgarh were mentioned, where the Assessing Officer have not made any efforts to record the statement of the **Shri Madan Lal Pahuja, the proprietor of M/s Lovy Steel & Allied Industries and Shri Jatinder Kumar, Prop. M/s Shree Nath Ispat Udyog.** Further, at the time of finalisation of assessment instead of three parties, the Assessing Officer had made the additions on account of the purchases made from these three parties as well as **M/s Shree Radhey Steel & Alloys.** Further, the non-application of mind is clear that in reasons to believe, it was mentioned that the Assessee had made purchases for Rs.4.26 Crores. In contrast, the details of three companies mentioned hereinabove only show Rs.1.05 Crores, Rs.0.17 Crores and Rs.2.06 Crores (Rs.3.28 Crores). Thus, the Assessing Officer at one point is saying that the purchases were

made for Rs.4.26 Crores and other point as against the figure given for Rs.3.28 Crores. The abovesaid, clearly shows there was total non-application of mind by the Assessing Officer at the time of reopening the assessment. In view of the contradictory facts on the matter of quantum of purchases, we quashed the reopening made by the Assessing Officer on this ground also.

23. In the light of the above discussion, the appeal of the Assessee is allowed on legal ground.

24. Though, we had allowed the appeal of the Assessee on the legal ground, we deem it appropriate to discuss the case of the Assessee on merit also. The Assessing Officer made the additions/reopening of assessment were made by the Assessing Officer solely on the basis of the statement recorded by the investigating wing of Shri Madan Lal Pahuja on 07.01.2015. The recording of the statement was the foundation fact as whole case of the Assessing Officer revolves around that statement. The said statement recorded by the investigating wing is not sacrosanct and was required to be proved on the anvil of cross-examination during the assessment proceedings. The Assessee, after receiving the copy of the statement on 08.12.2017 had requested the Assessing Officer to permit the Assessee to cross-examine Shri Madan Lal Pahuja. However, the notice sent through the Inspector for recording the statement of Shri Madan Lal Pahuja had not yielded any result as he failed to turned up for examination and cross-examination during the re-assessment proceedings. In our opinion, the statement recorded by the investigating wing cannot form the basis of making the addition unless it is proved in accordance with

law in the assessment proceedings. It was the duty of revenue to produce the witness namely Shri Madan Lal Pahuja as the revenue was relying upon his statement. In our opinion, the onus to produce and examine a witness is on a party who reliance rest on him and not on the other party. The Assessing Officer cannot shift his onus to produce the witness and, in our view, the AO's onusto produce Shri Madan Lal Pahuja would not shift on the Assessee.

25. Further, once the Assessing Officer of Shri Madan Lal Pahuja had accepted the sales made to the Assessee in the Assessment Order dated 20.12.2017 passed under Section 143(3) read with 147 of the Act, then the said purchases (sale of Shri Madan Lal Pahuja) cannot be disputed by the Assessing Officer of the Assessee. The abovesaid fact was brought to the notice of the Assessing Officer. However, neither the Assessing Officer nor the CIT (A) had considered the abovesaid fact. Further, both the Lower Authorities had not disputed that the purchases were made by the Assessee from the same parties in subsequent assessment years i.e. 2011-12 & 2012-13 and the Assessment Orders were provided to the Lower Authorities. In our opinion, this is contrary to law laid down by the Hon'ble High Court of Punjab & Haryana in the matter of Leaders Valve (supra). Further, we are of the opinion that nothing has been brought on record by the Assessing Officer or by the CIT (A) to prove that the invoices were issued by the other three concerns namely (1) M/s Lovy Steel & Allied Industries, Dr. Bansal Clinic, sector-3C, Mandi Gobindgarh, (2) Sh. Jatinder Kumar Prop. M/s Shree Nath Ispat Udyog, Bank of India Road, Mandi Gobindgarh, and (3) M/s Shree Radhey Steel & Alloys. As recorded hereinabove, the Assessment Order was passed in the case of Shri Madan Lal Pahuja by applying the

GP Rate of 1.2% on total turnover of Rs.12.43 Crores. The sales were accepted by the department which were duly reflected in the VAT forms. However, by alleging that vehicle numbers mentioned on some of the invoices is not matching, that cannot be a reason to doubt the purchases more particularly when the sales of the Shri Madan Lal Pahuja and purchases by the Assessee in the VAT assessment in respect of all the parties were accepted. Further, the revenue has not doubted the quantitative details provided by the Appellant and has not pointed out any discrepancy in the same. The Respondent Revenue had denied the sales on the basis of 7 sample vehicle registration only despite the fact that the Assessee had provided 33 bills to the Assessing Officer and further the Assessee had submitted that the goods were purchased from these parties and has provided the registration certificate in respect of the other 26 vehicles. The total amount of the seven bills for which the AO had suspicion was for Rs.53,72,955/- only. Undoubtedly the sale of the Assessee had not been doubted by the department. Once the sales of the Assessee have not been doubted and only a fraction of the purchase of Rs.53,72,955/- was doubted then the entire purchase cannot be added in the income of the Assessee. In the light of the decision of the Hon'ble Gujarat High Court in the matter of Bholanath Polyfab [355 ITR 290], even the GP on the amount of sale of Rs.53,72,955/- cannot be added in the hands of the Assessee as the sales made by Shri Madan Lal Pahuja and others were accepted by the department in the Assessment Order passed under Section 143(3) of the Act. Once the sales have been accepted in the hands of the seller, the same cannot be doubted in the hands of the purchaser.

26. Further, as mentioned hereinabove, the Assessee has requested for cross-examination of Shri Madan Lal Pahuja and the same was not provided to the Assessee and therefore for not providing the opportunity to cross examine a person whose statement was recorded by the investigating wing and relied upon by the Assessing Officer, itself is a reason to quash the entire assessment. For the aforesaid proposition, we may rely upon the decision of the Hon'ble Supreme Court in the matter of Andaman Timber Limited Vs CCE [2015] 62 Taxman.com3 (Supreme Court).

27. In the light of the factual matrix of the case and judicial precedents, we are of the considered opinion that no addition can be sustained against the Assessee, on merits.

28. In the result, the appeal of the Assessee is allowed.

Sd/-

(LALIET KUMAR)
Judicial member

Sd/-

(DR.M. L MEENA)
Accountant Member

Dated: 25/08/2021

*DOC

Copy of order forwarded to:

- | | |
|---------------------------------|--------------------|
| (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*