* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgement delivered on: 22.05.2025*

\+ **ITA 178/2023**

PR. COMMISSIONER OF INCOME TAX -CENTRAL LUDHIANA .....Appellant

versus

M/S. GARG ACRYLICS LTD .....Respondent.

Advocates who appeared in this case

For the Appellant : Mr.Debesh Panda, SSC.

For the Respondent : Mr.Rohit Jain, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

VIBHU BAKHRU, J.

1. The Revenue has preferred the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**], *inter alia*, impugning an order dated 27.10.2020 [**impugned order**] passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No.6834/Del/2014, in respect of Assessment Year [**AY**] 2011-12.

2. The impugned order is a common order in respect of ITA No.6834/Del/2014 as well as ITA No.4713/Del/2015 in respect of AY 2011-

12 and AY 2012-13, respectively. However, the present appeal is confined to the impugned order insofar as it relates to ITA No.6834/Del/2014 for AY 2011-12.

3. The Revenue had filed the aforementioned appeal against the order dated 30.09.2014 passed by the Commissioner of Income Tax (Appeals)-XV, New Delhi [**CIT(A)**], whereby the respondent's [**Assessee**] appeal against the assessment order dated 31.03.2014 passed by the Assessing Officer [**AO**] under Section 143(3) of the Act, was allowed. And, the additions made by the AO – ₹20,17,00,000/- under Section 68 of the Act and ₹20,24,39,341/- on account of income from undisclosed sources – were deleted.

4. As stated above, the Revenue appealed the said decision of the CIT(A), which was rejected by the impugned order.

QUESTION OF LAW

5. The present appeal was admitted on 15.02.2024 in respect of following questions of law:-

> "A. Whether on the facts and circumstances of the case and in law, the ITAT has erred in deleting the addition of Rs.20,24,39,341/- made on account of bogus purchases and sales?
>
> B. Whether on the facts and in the circumstances of the case and in law, the ITAT has erred in holding that the provisions of Section 145(3) of the Income Tax Act, 1961 ["**Act**"] were not applied despite the fact that the purchases and sales were found bogus and the same has

elaborately been discussed in the assessment order and that tantamount to rejection of books of accounts under Section 145(3) of the Act?"

FACTUAL CONTEXT

6. The Assessee is a company engaged in the business of manufacturing and trading of yarn and garments. The Assessee filed its return of income on 29.09.2011, declaring a total income of ₹31,41,11,880/- for AY 2011-12. The Assessee's return was picked up for scrutiny and the assessment proceedings culminated in the assessment order dated 31.03.2014. During the assessment proceedings, the AO noted that during the financial year [**FY**] 2010-11 the Assessee had received share application money aggregating ₹20,17,00,000/- from various entities and had allotted 80,000 shares at the face value of ₹10/- each, at a premium of ₹1,990/-. Thus, the issued share capital and premium had increased by ₹16,00,00,000/-, and as of 31.03.2011, a sum of ₹4,17,00,000/- was outstanding as share application money. The amount received from various entities against the share application as set out in the assessment order, is reproduced below:-

"SL. NO.	**Assessment particulars**	**Amount of share application money received**
1.	Himachal Yarns Formerly Himachal Steel Udyog Ltd. PAN: AABCH0451J	7,07,10,000/-
2.	Brijeshwari Textiles Pvt. Ltd PAN: AACCB7479K	3,00,00,000/-
3.	Balmukhi Textile Pvt. Ltd. PAN: AACCB7477K	3,00,00,000/-
4.	Shiv Spin Fab Pvt. Ltd. PAN: AAKCS6521K	4,00,00,000/-
5.	GAL Cottex Pvt. Ltd. PAN: AABCS8023C	2,03,70,000/-

6.	Shubam Yarns Pvt. Ltd PAN: AAGCS8023C	1,06,20,000/-
		20,17,00,000/-
80000 equity shares allotted during the year @2000/- each		**16,00,00,000/-**
Outstanding share application money as at 31.03.2011		**4,17,00,000/-"**

7. During the course of enquiry, the AO found that the financial strength of the investor companies did not indicate that they had the capacity to invest large amounts of share application money. Further, the AO noted that the earning per share of the Assessee is ₹226/- and, according to the AO, the same did not justify the large premium. The AO also concluded that the share applicants were promoted and operated by the family members of the promoters of the Assessee company. The Assessee had furnished the details of the investor entities including their PAN, returns of income, and details of their directors. However, the AO did not accept that the transactions were genuine as the Assessee had failed to produce the representative of the investor entities. Accordingly, the AO made an addition of ₹20,17,00,000/- under Section 68 of the Act to the Assessee's income.

8. The Assessee appealed the said decision before the CIT(A). The CIT(A) found that the Assessee had disclosed full details of the investors company, including the name, addresses and PAN and also furnished the copies of their income tax returns along with the letters of confirmation. The CIT(A) noted that the AO had also issued notices under Section 133(6) of the Act, and faulted the AO for not giving any finding with regard to the proceedings under Section 133(6) of the Act. More importantly, the CIT(A)

also noted that that the findings of the AO were inconsistent. The AO had observed that none of the investors were known to the employees/managing director of the Assessee. However, while contrary to this observation, the AO had also recorded that the promoters of the investor companies were related to the promoters of the Assessee company. On examination of the facts, the CIT(A) concluded that identity of six investor companies was duly established. The CIT(A) thereafter proceeded to examine the financial statements of the investor company and found that the shareholders' funds of the said companies exceeded the investments made by subscribing to the shares of the Assessee. The CIT(A) also faulted the AO for not conducting further inquiries and for doubting the creditworthiness of the investor entities. The CIT(A) found that there was no reason to doubt the genuineness of the transaction and the share premium was justified, as the book value of the shares of the Assessee was ₹3,812/-.

9. Accordingly, the addition made under Section 68 of the Act was deleted by the CIT(A) based on a factual determination regarding the identity and creditworthiness of the investor entities as well as the genuineness of the transaction.

10. The learned ITAT upheld the CIT(A)'s decision. In view of the concurrent findings of fact, no substantial question arises in respect of the said addition. The present appeal was admitted and was confined to the questions of law relating to the addition of ₹20,24,39,341/- made on account of bogus purchases and sales.

11. The relevant facts relating to addition of ₹20,24,39,341/- are as

follows. Search and seizure operations were conducted under Section 132 of the Act in the premises of one M/s. SEL Manufacturing Company Limited [**SEL**] on 11.09.2023. During the course of the search, it was reportedly found that the Assessee was involved in suspicious transactions of bogus sales/ purchases of knitted cloth /fabric with SEL. By a letter dated 21.01.2014, the Deputy Director of Income Tax (Investigation), Shimla informed the AO that during FY 2011-12, SEL had purchased the goods valued at ₹44.65 Crores from the Assessee. And, SEL Group had reportedly reflected bogus sale of goods at an aggregate value of ₹29.16 Crores to the Assessee. Allegedly, the sales were not supported by any delivery challan and the transportation of goods could not be reconciled with inward / outward gate registers.

12. Thereafter, on 29.09.2013, survey under Section 133A of the Act was conducted in the premises of the Assessee. The Assessee was called upon to furnish proof of the purchase of goods from SEL and further provide the information as to where the goods were stored. The Assessee was also called upon to provide details regarding the unloading expenses of goods in question and also to substantiate the same with its books of accounts.

13. The Assessee informed the authorities conducting the survey that the goods purchased were delivered at the supplier's establishment; the goods were then transported by the Assessee's owned trucks/commercial vehicles; and were stored at the Assessee's godown. In some cases, the goods were transported from the supplier directly to the Assessee's customers. The Assessee explained that the said goods were not processed and did not undergo any value addition. The same were sold as received without any

processing. The Assessee explained that the goods never entered their factory premises and were kept in separate godowns located at Kanganwal Road, Ludhiana. Therefore, there is no entry (inward / outward) of the goods in the factory inward gate register.

14. The statement of Mr Sanjiv Garg, managing director of the Assessee, to the aforesaid effect, was recorded during the survey conducted under Section 133A of the Act.

15. The AO concluded that the Assessee had made payments of ₹1,10,89,61,370/- on account of the purchases that were bogus. The Assessee had also received ₹1,31,14,00,711/- on account of sales. According to the AO, the same were bogus as well. The AO found that by virtue of the said bogus transactions of sales or purchases, the Assessee had introduced a sum of ₹20,24,39,341/- as income in its books, which was liable to be taxed as undisclosed income. Accordingly, the AO made an addition aggregating to ₹40,41,39,341/- [₹20,17,00,000/- + ₹20,24,39,341/-] in the declared income of the Assessee [₹31,41,11,880/-] and assessed the income at ₹71,82,51,221/-.

16. Insofar as the addition of ₹20.24 Crores is concerned, the CIT(A) as well as the learned ITAT noted that the difference between the bogus purchases and the bogus sales, which is sought to be taxed as unexplained income had already been surrendered to tax as it is captured in profit declared by the Assessee. The learned ITAT did not find any fault with the CIT(A)'s said decision and upheld the same.

REASONS AND CONCLUSION

17. Mr Panda, learned counsel for the Revenue contended that the CIT(A) and the learned ITAT had erred in proceeding on the basis that the income from the bogus transactions of sales and purchases were taxed twice over. He submitted that since the AO had concluded that the sales and purchases were bogus, he was required to ascertain the profits earned by the Assessee. Accordingly, he had done so. He also submitted that since the AO concluded that the sales and purchases were bogus, it was implicit that he has rejected the Assessee's books of accounts. He relied upon the decision of the Calcutta High Court in ***M/s Samadaar Brothers v. Commissioner of Income Tax: 2023 148 Taxman.com 453*** in support of his contention.

18. Mr Jain, learned counsel appearing for the Assessee disputed the contentions as advanced on behalf of the Revenue.

19. As noted above, the present appeal is confined to two questions of law that relate to the addition of ₹20,24,39,341/- made by the AO on account of the alleged bogus purchases and sales. The CIT(A) and the learned ITAT concurrently found that making the said additions would amount to double taxation of the same income, therefore, had set aside the additions.

20. The ITAT also observed that the AO had not rejected the books of accounts and had not passed any order under Section 144 of the Act. This observation is also a matter of contestation before this Court.

21. We consider it apposite to address the second question – whether the ITAT erred in holding that the AO had not applied the provisions of Section

145(3) of the Act – before proceeding to address the first question. It would be relevant to refer to the assessment order in some detail to ascertain the AO's reasoning for making the addition regarding the undisclosed income and to determine whether the AO had, in fact, made assessment under Section 145(3) of the Act.

22. We consider it apposite to refer to Section 145(3) of the Act, which reads as under: -

> "145. **Method of accounting.**
> (1) *** *** ***
> (2) *** *** ***
> (3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144."

23. In the event, the AO is not satisfied about the correctness and completeness of the accounts, the AO is empowered to make the best judgment assessment under Section 144 of the Act. We also consider it relevant to refer to Section 144(1) of the Act, which reads as under:-

> "144. **Best judgment assessment**.
> (1) If any person—
> (*a*) fails to make the return required under sub-section (1) of section 139 and has not made a return or a revised return under sub-section (4) or sub-section (5) or an updated return under sub-section (8A) of that section, or

(*b*) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 or fails to comply with a direction issued under sub-section (2A) of that section, or
(*c*) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143,
the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment :
Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment :
Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section 142 has been issued prior to the making of an assessment under this section."

24. In terms of Section 144 of the Act read with Section 145(3) of the Act, in certain circumstances – including where the assessing officer is not satisfied about the correctness or completeness of the accounts of the assessee – the assessing officer may make an assessment of the total income or loss by his best judgment. However, before doing so, the assessing officer is required to afford the assessee an opportunity to be heard and is also required to take into account all relevant material, which he has gathered.

25. Bearing the same in mind, it is relevant to examine the assessment

order in some detail. In the assessment order, the AO refers to the search conducted in the premises of SEL on 11.09.2013 and notes that, during the course of the said search, it was found that the Assessee was involved in some suspicious transactions involving bogus purchases / sales of goods (mainly knitted cloth / fabric) with SEL group. The AO also noted that, during the relevant period, the DDIT (Investigation) had reported that SEL Group had made purchases from the Assessee amounting to ₹44.65 Crores. Similarly, it was also reported that SEL also made bogus sales amounting to ₹29.16 Crores to the Assessee. A survey under Section 133A of the Act was carried out at the premises of the Assessee on 29.09.2013 and the Assessee was called upon to furnish the details of (i) purchases made from SEL group; (ii) the proof where the goods were stored; (iii) the details of unloading expenses; and (iv) how the said expense appear in the books of account.

26. The Assessee's response to the said queries, as noted in the assessment order, reads as under: -

> "The purchase from SEL Manufacturing Co. Ltd has been made with an intent to resale it without doing any further processing or value addition. The purchase goods are delivered at the assessee company's godown site by the supplier. Sometimes the goods are directly sent to the customers and often the goods are unloaded into the godown and from there the goods are loaded into the assessee company's owned trucks / commercial vehicles and further sent to the intended customers since the movement of traded goods are through suppliers' trucks and through the assessee company's owned vehicles, so the bilty/ G.R have not been issued/ generated.

> For carrying out trading activities, the assessee company has a separate business place at Kanganwal Road, Ludhiana. At this site, four godowns have been erected and the place has a separate gate. Traded goods are moved in & out through this separate gat only. Stock register is being maintained for purchases and sale of trade goods. The traded goods do not enter the factory premises wherein manufacturing activities were carried on. Therefore no entry in the factory inward gate register have been made."

27. The AO also considered the statement made by Mr Sanjiv Garg, Managing Director of the Assessee, during the course of the survey at the Assessee's premises. Some of the questions posed and Mr Garg's responses to the same, as reproduced in the assessment order, are set out below:-

> "Q16. Please explain that have you entered the consignment details in your inward register, when you have received the consignment & entered into outward register, when you sold the consignment to the party.
> Ans. We have separate godowns in Unit III for keeping stock for trading purpose. No inward and outward register are being maintained for trading items.
>
> Q17. Then how will you manage the monitoring the stock in trade?
> Ans. We don't have any mechanism for this and we are doing trading on consignment basis.
>
> Q18. Please provide the trading unloading labour charges vouchers on this trading activity.
> Ans. We are not maintaining any separate record for that."

28. After noting the said responses, the AO concluded as under: -

> "From the facts noted above it is clear that the assessee company is involved in bogus transactions of purchase and sales, that is corroborated from the facts that neither records were found with other parties i.e, SEL manufacturing company nor with the assessee company. The total payments for such bogus purchases is at Rs.1108961370/- and total payments received for bogus sales is at Rs.1311400711/-. Thus the assessee company by virtue of these transaction has introduced additional funds in the business at Rs.20,24,39,341/- as income from undisclosed sourced from the bogus transactions. In result, of these bogus purchases, the assessee also shown payments of Rs.1108961370/- for these bogus purchases, the assessee also shown total receipt of Rs.1,31,14,00,711/- for these bogus sale made. Since, all these sales and purchases are proved bogus during the course of search and survey, therefore, no real expenses are incurred by the assessee on these bogus sales and purchase, accordingly, the whole difference of Rs.20,24,39,341/- is being treated as undisclosed income of the assessee and the same is hereby added back in the income of the assessee. Since, I am satisfied that the assessee has concealed its income by furnishing inaccurate particulars of its income, therefore, penalty proceedings u/s 271(l)(c) is initiated separately."

29. It is apparent from the above that the addition of ₹20,24,39,341/- was premised essentially on two findings. First, that the payment of ₹1,10,89,61,370/- for purchases were bogus and the total receipts of ₹1,31,14,00,711/- on account of sales of the goods purchased were also

bogus. The AO has accordingly calculated the difference between the payments for purchases and receipts from sales as ascertained from the records, and treated the difference as undisclosed income introduced by the Assessee in its books. Thus, in effect, whilst the AO rejected the accounts, it accepted the payments and receipts as recorded in the books. The AO has not recorded any finding to the effect that it has rejected the books of the Assessee in its entirety and the assessment is based on his best judgment. However, in effect, while accepting the payments and receipts as reflected in the books of accounts, the AO has rejected the accounts regarding the sales and purchases. The assessment order does not refer to any material other than the report received from the DDIT (Investigation) Shimla regarding the search conducted in the premises of SEL as well as the Assessee's response to the queries posed during the survey including the statement of its Managing Director. The response of the Assessee and the statement of its Managing Director recorded during survey does not lead to the conclusion that the Assessee's books are not correctly drawn up. On the contrary, the Assessee had disclosed that it had purchased certain goods for trading and the same were sold without any value addition. The same were also stored separately. This explanation did not present any reason for the AO to reject the books of accounts.

30. Insofar as bogus sales and purchases are concerned, the DDIT had referred to a letter dated 21.01.2014 sent by the DDIT (Investigation), Shimla, informing that SEL/SEL Group had purchased goods of a value of ₹44.65 Crores from the Assessee and had reported sales to the Assessee of a value of ₹29.16 Crores. The AO had accepted the said information as

correct. However, the same would indicate that only a sum of ₹15.49 Crores (₹44.65 Crores – ₹29.16 Crores) was infused as revenue from allegedly bogus sales. It does appear that the AO had imputed the said information to all purchases and sales made by the Assessee and had sought to make an addition of a sum of ₹20,24,39,341/- on the said basis. There is no discussion regarding any other elements of revenue or expenditure. However, the AO also made observations to the effect that since purchases and sales were bogus, there could be no allowance for expenses. The AO has, in effect, not accepted the accounts in entirety.

31. In the given circumstances, the second question must be answered in affirmative. However, we do not find the said question to be of much relevance to the real controversy in the present case.

32. The principal question to be addressed is whether the CIT(A) and the learned ITAT erred in deleting the addition of ₹20,24,39,341/-. The answer to this question must clearly be in the negative. This is because the revenue from sales was already disclosed by the Assessee in its books. The AO proceeded to make an addition on the basis of the difference between receipts on account of sales and payments made on account of purchases. Plainly, the AO has failed to consider that the sales were already a part of the revenue declared by the Assessee. The payments also reflected the outflow on account of purchases. Thus, in any event, the net revenue being the difference between the sales and purchases, was already surrendered to tax. At best, the AO could have disallowed the expenditure, if any, claimed on account of carrying on the trading activity. However, the AO has proceeded to add net revenue from sales (that is, sales less purchases) as

income notwithstanding the same was already subsumed in the Assessee's declared income.

33. The CIT(A) also noted that the Assessee's declared income was in excess of the net revenue of ₹20,24,39,341/- as computed by the AO. Thus, it is apparent that the addition of net revenue (sales less purchases) to the declared income, in effect, results in the income being taxed twice.

34. In view of the above, we find no infirmity with the concurrent finding of the CIT(A) and the learned ITAT in this regard. The first question is, thus, answered in the negative; that is, in favour of the Assessee and against the Revenue.

35. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 22, 2025
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