

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “E” BENCH: NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.3326/Del/2023
[Assessment Year : 2021-22]**

DCIT, Circle Hisar	vs	Tirupati Matsup Private Limited #65, First Floor, Officer Colony, Gangwa Road, Azad Nagar, Hisar-125001. PAN-AAGCT4352D
APPELLANT		RESPONDENT

**C.O.No.-4/Del/2024
[In ITA No.3326/Del/2023]
[Assessment Year : 2021-22]**

Tirupati Matsup Private Limited #65, First Floor, Officer Colony, Gangwa Road, Azad Nagar, Hisar-125001. PAN-AAGCT4352D	vs	DCIT, Circle Hisar
APPELLANT		RESPONDENT
Revenue by	Shri Sujit Kumar, CIT DR	
Assessee by	Shri Sudhir Shegal, Adv.	
Date of Hearing	30.04.2025	
Date of Pronouncement	16.05.2025	

ORDER

PER MANISH AGARWAL, AM :

The present appeal has been filed by the Revenue seeking to assail the First Appellate order dated 30.09.2023 of Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre (“NFAC”), Delhi [“Ld.CIT(A)”] in Appeal No.NFAC/2020-21/10213938 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 15.12.2022 passed u/s 143(3) r.w.s 144B of the Act pertaining to assessment year 2021-22. The assessee, in turn, has also filed Cross Objection [C.O.No.4/Del/2024] in

Revenue's appeal under section 253 of the Act.

2. Brief facts of the case are that the assessee is a company, engaged in the business of wholesale trade of building materials like Cement/TMT/Cables etc. and also was a civil contractor for various Government Departments and also with private companies. The return of income for the year under appeal was filed on 02.03.2022 at an income of INR 47,24,190/-. The case of the assessee was selected under CASS for complete scrutiny. During the course of assessment proceedings, various notices under section 142(1) were issued which were complied with by the assessee. The AO observed that the assessee has made purchases from various parties and in order to examine the genuineness of the purchases, summons under section 133(6) of the Act were issued to various suppliers. In response to the notices, many parties have filed their submissions and in the last, out of 49 parties with whom the purchases were made, after examining the details filed by them or by the assessee, the AO concluded that purchases from three parties were bogus as the assessee has failed to substantiate the purchases made from them. Accordingly, the AO has made an addition of INR 31,95,74,125/- being the amount of purchases made from these three parties as unexplained expenditure under section 69C of the Act in terms of the order passed under s. 143 r.w.s 144B of the Act dated 15.12.2022.

3. Against this order, the assessee preferred appeal before the Ld.CIT(A) who vide impugned order dated 30.09.2023 has allowed substantial relief to the assessee wherein the Ld.CIT(A) has uphold the observations that purchases from these three parties is unverifiable. However, as against the disallowance

of the entire purchases made by the AO, the Ld. CIT(A) has restricted the same to the net profits on the said purchases by applying G.P. rate @ 2.39%. The Ld.CIT(A) further observed that the correct amount of purchases from these three parties was of INR 26,47,92,365/- as against INR 31,95,74,125/- taken by the AO and thus direct the AO to apply G.P Rate @ 2.39% on the purchase amount of INR 26,47,92,365/- only.

4. Against this order, the Revenue has filed appeal before the Tribunal and the assessee has filed cross-objections.

5. The Revenue has taken following grounds of appeal:-

- (i) *“Whether Ld. CIT(A) erred in restricting the GP @2.39% on the purchases made by assessee by ignoring the facts that the assessee failed to discharge its onus to prove the genuineness of purchases.*
- (ii). *Whether Ld. CIT(A) erred by ignoring the facts that purchases made in the name of M/s Krishna Traders happens to be a salaried person and has no business concern of any kind. On physical verification made by Verification Unit, no such concern found existed on the addresses given by the assessee of purchase party.*
- (iii). *Whether Ld. CIT(A) erred by ignoring the facts GST of Rs.2.44 Crores along with interest has been paid by the assessee on the behalf of purchase party i.e. M/s Krishna Traders which was found not existed at the time of GST survey. Why a prudent businessman will pay GST voluntarily under section 73(5) on the behalf of third party and loose hard earned money.”*

6. The assessee has taken following grounds in cross-objection appeal:-

1. *“That the Ld. CIT(A), NFAC, Delhi has erred in restricting the addition of the gross profit 2.39% on the purchases made from three suppliers, ignoring the facts that the assessee had discharged the onus to prove the genuineness of purchases from these parties.*

2. *That the Ld. CIT(A), NFAC, Delhi having appreciated the fact that the books of accounts having not been rejected either by the Ld. Assessing Officer/CIT(A) and, therefore, the genuineness of all the purchases and sales having been accepted, and, as such, the addition on account of G.P. @ 2.39% on the purchases from three parties could not have made.*
 3. *That the payment of GST on behalf of M/s Krishna Traders was made by the assessee to avoid protracted proceedings and to settle the case with the GST department and further being the end user, otherwise the GST was to be paid by the assessee, if the other party does not comply with the same to earn peace of mind and, as such, the assessee acted as a prudent businessman.*
 4. *That respondent craves leave to add or amend the ground of cross objections before the appeal is finally heard or disposed off.”*
7. Before us, the Ld.CIT DR for the Revenue supported the order of the AO and submitted that in the instant case, the AO had made detailed enquiries and investigations with respect to the purchases made by the assessee. The Ld.CIT DR submitted that summons under section 133(6) were issued to 49 parties and in case of 24 parties, replies were submitted and for the remaining parties, except two parties, replies were either submitted later by the respective assessee or by the suppliers. However, in respect of three parties namely Krishna Traders (Virendra Singh), Som Enterprises (Mahinder Singh), Indo Trading Co. either no compliance was made or the supplier has denied of having any business transaction with the assessee. The Ld.CIT DR further submits that in the case of Krishna Traders, the reply was received by the AO wherein its proprietor namely, Shri Virendra Singh has stated that he was a salaried person and never carried out any business. In its case, a survey was also carried out by Goods & Service Tax Commissionerate, Anti Evasion,

Rothak. It was found that M/s. Krishna Traders has not made the payments of GST on its own sales and subsequently, the assessee has deposited the amount of GST alongwith interest on the purchase made by it from M/s. Krishna Traders. The Ld.CIT DR submits that this fact of voluntary deposit of GST with interest itself proved that the assessee has admitted the purchases made from Krishna Traders were not genuine. With regard to the purchases from Indo Trading company, the Ld.CIT DR submits that the assessee has failed to establish the existence of the party as well as failed to file any supporting evidences to substantiate the transactions. Therefore, the AO has rightly held the said purchase as in-genuine. With regard to Som Enterprises, verification was done and it was found that said party has not responded to the notices issued by the AO. Therefore, as per the Ld.CIT DR, the action of the AO in holding the purchases made as in-geunine from these three parties deserves to be uphold. With respect of the application of G.P. rate as against disallowance of the total purchases made from these parties, the Ld.CIT DR submitted when it is established that no purchases were made from these parties, the entire amount of purchases should be added and Ld.CIT(A) has made an error in applying G.P. rate on such purchases therefore, he prayed for the restoration of the additions so made by AO.

8. On the other hand, the Ld.AR for the assessee submitted that the AO has wrongly added the entire amount of purchases made from these three parties when he has not invoked the provision of section 145(3) of the Act and accepted the trading results declared by the assessee. The Ld.AR for the assessee further submitted that the sales made against such purchases have also not been doubted and if the purchases to the tune of INR 26,47,92,365/-

is disallowed and added back to the total income, the resultant profits would be an abnormal figure which cannot be achieved in the line of trade of the assessee. He further submits that the Ld.CIT(A) has appreciated these facts while applying the G.P. rate. However, Ld.AR for the assessee stated that merely the assessee has deposited the amount of GST alongwith the interest in respect of the purchases made from Krishna Traders, it cannot be inferred that the assessee has accepted the allegation of in-genuine purchases from that party. As per the Ld.AR for the assessee, under GST Act in section 73(5) of the Act where the suppliers has not paid the taxes on the sales made, the authorities can recover the amount of tax from the buyers of goods and under these provisions, in order to avoid the penal action, the assessee has paid the amount of GST. This payment is nothing to do with the purchases made which was genuine transaction and the purchases were duly supported by bills/vouchers and e-way bills were generated which were sent alongwith transportation of the goods. The Ld.AR further submitted that while applying G.P. rate @ 2.39%, the Ld.CIT(A) has picked the higher G.P. rate of three years including year under appeal. The Ld.AR further submitted that the assessee has duly discharged its onus to prove the purchases made from these three parties by submitting their invoices and e-way bills and in none of the case, the summons issued under section 133(6) of the Act were returned back, which further proves the existence of these parties. He further submits that all the payments in respect of purchases made from these parties were made through Account Payee cheque and therefore, the purchases made cannot be doubted. Alternatively, he submits that in case the Bench is of the view that purchases are not genuine only G.P. rate of average of past three years should

be applied as against the highest G.P.rate of three years. He prayed accordingly.

9. On careful consideration of the arguments put forth by both the parties and after perusing the material available on record, we find that the AO has made an addition of INR 31,95,74,125/- being purchases made from three parties by holding the same as unverifiable/in-genuine purchases and invoked the provision of section 69C of the Act for making disallowance of the same as unexplained expenditure. The Ld.CIT(A) observed that the amount of INR 31,95,74,125/- includes the amount of GST also thus the net amount of purchases i.e. the value of goods is to be considered as amount of purchases and accordingly, he reduces the amount of purchases from INR 31,95,74,125/- to INR 26,47,92,365/-. This action of the Ld.CIT(A) has not been disputed by both the parties thus, the correct amount of purchases to be considered is INR 26,47,92,365/-.

10. Now two issues are before us for consideration:-

- (i) whether the purchases made from three parties namely, Indo Trading Co. of INR 2,05,20,760/-; from Krishna Traders of INR 11,34,17,555/-; and from M/s. Som Enterprises of INR 13,08,54,050/- is genuine or not; and
- (ii) whether the whole gross amount of purchases from these three parties is to be held as unexplained expenditure and added back to the income of the assessee or a reasonable profit rate on the same is to be applied and added back to the income of the assessee.

11. Both the above issues are borne out from the grounds of appeal raised by the Revenue and in the issues taken by the assessee in its Cross-objection. Therefore, both are taken together and decided herein below.

12. From the perusal of the assessment order and the appellate order, we find that in respect of Indo Trading Co. & Soma Enterprises, the notices were issued under section 133(6) however, no replies were received by the AO from these parties. Even the assessee has filed only the copy of ledger account as appearing in its books of accounts and neither confirmation nor bank statement etc. were filed in respect of these two parties. Therefore, the purchases made from these parties remained unverified. With regard to Krishna Trader, in response to notice issued under section 133(6) of the Act, a response was received by the AO. After perusing such response, the AO observed that Shri Virendra Singh has stated that he is a salaried employee and is working as Fireman in IOCL for last 10 years and thus he is not carrying out any business in the name of Krishna Traders and having no transactions with the assessee. It is further seen that the GST Department has carried out a survey at the business premises of M/s. Krishna Traders and it was found that no tax was deposited by Krishna Traders on the goods sold by it and subsequently, the assessee has deposited the tax alongwith interest on the purchases made from Krishna Traders. It is further seen that the assessee has filed the copies of the invoices, e-way bills and further claimed that the payments were made to these parties through banking channels. However, merely by following these details, it cannot be stated that the purchases made from these parties are genuine more particularly, in the light of admission of

the proprietor of M/s. Krishan Traders. In view of these facts, we are inclined to interfere in the observations made by the lower authorities that purchases made of INR 26,47,92,365/- from three parities remained unverified.

13. At the same time, it is seen that the claim of the assessee that the goods purchased from these parties were sold and due profits were offered for tax which has not been doubted by the AO. Neither the provision of section 145(3) were invoked nor the turnover of the assessee was doubted. The Hon'ble Supreme Court in the case of ***N.K. Proteins vs DCIT reported in 292 CTR 354 (SC)*** has held that in case of unverifiable purchase, the profit element embedded should be taxed and not the entire amount of purchases. It is also seen that if the entire purchases is added that would give absurd results thus in our considered view, the action of the Ld.CIT(A) in applying the profit rate on such unverifiable purchases is correct and such action is hereby upheld.

14. Now coming to the question on what rate of profit is to be applied on such purchases. The Hon'ble Supreme Court in the case of N.K.Proteins (supra) and others has upheld 25% profits on such unverifiable purchases. However, in that case, there were evidences found by the authorities during the course of search which suggests the suppression of profits by 25% of purchases therefore, the Hon'ble Court was of the view that the profit rate of 25% is to be applied.

15. In the instant case as observed above, there is no such material brought on record which could suggest that the profit of 25% is suppressed by the assessee. It is settled proposition of law in case of the estimation of profits, past history of the assessee is to be considered and also certain amount of

estimation could be done looking to the facts of the case. In the instant case admittedly, the assessee has shown better results as compared to preceding years and is engaged in the business of wholesale supply of building material and also worked as civil contractor where the profit rate is comparatively high as against 2.39% applied by the Ld.CIT(A).

16. Considering the overall facts and circumstances of the case, in our considered opinion, G.P rate of 5% on the in-genuine purchase of INR 26,47,92,365/- would be reasonable to meet the end of justice. Accordingly, we direct the AO to apply profit rate of 5% on such unverifiable purchases and made addition after reducing the G.P. declared by the assessee on such purchases. Here we wish to state that the addition is confirmed on account of trading addition and no addition is sustained under s. 69C of the Act as after application of the profit rate, there is no question of invoking the provision of section 69C of the Act. With these directions, Ground of appeal raised by the Revenue is partly allowed and cross-objections taken by the assessee are dismissed.

17. In the result, the appeal of the Revenue in **ITA No.3326/Del/2023 [AY 2021-22]** is partly allowed and Cross-objection of the assessee in **C.O.No.4/Del/2024 [AY 2021-22]** is dismissed.

Order pronounced in the open Court on 16.05.2025.

Sd/-

**(MAHAVIR SINGH)
VICE PRESIDENT**

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI