

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**Before Sh. Amit Shukla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 3982/Del/2015 : Asstt. Year : 2009-10**

ACIT, Circle-10(2), New Delhi	Vs	M/s GTM Builders & Promoters Pvt. Ltd., G-5, Pushkar Enclave, Outer Ring Road, Pachim Vihar, New Delhi-110063
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCG2761R</b>		

**Assessee by : Sh. K. Sampath, Adv.**

**Revenue by : Ms. Sunita Singh, CIT DR**

**Date of Hearing: 13.01.2021**

**Date of Pronouncement: 08.02.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the revenue against the order of Id. CIT(A)-41, New Delhi dated 25.03.2015.

2. Following grounds have been raised by the revenue:

*"1. Whether on the facts and circumstances of the case & in law, the Id. CIT (A) erred in deleting the addition of Rs.3,35,87,118/- made on account of bogus purchases.*

*2. Whether on the facts and circumstances of the case & in law, the Id. CIT (A) erred in ignoring the fact that even after providing sufficient opportunities the assessee failed to produce even a single party from whom purchases has been made."*

3. For the sake of ready reference and convenience, the relevant portion of the order of the Id. CIT (A) with regard to the alleged bogus purchases is reproduced as under:

"4. The only issue involved in this appeal relates to addition of Rs.3,35,87,118/- made by the AO by holding the purchases made by the appellant as bogus. The facts leading to the addition are that the A.O. required the appellant to furnish the details of purchases made during the year. After scrutinizing these details, the A.O. required the appellant to produce the parties from whom purchases exceeding Rs. 10 lacs were made. As the appellant failed to produce the parties, the A.O. selected on random basis, certain parties and the Inspector was deputed to make spot inquiry and give a factual report. On the basis of the report of the Inspector and other facts, in respect of the following parties, the purchases made by the appellant were not found genuine by the AO. The relevant extract from the assessment order is as follows:

"I. M/s Meet Enterprises

1.1 Information received from Investigation Wing Dehradun in respect of M/s Meet Enterprises:

i. The Investigation Wing, Dehradun has informed that the assessee. M/s GTM Builders & Promoters Pvt. Ltd received accommodation entries of Rs.98,56,480/- in F.Y. 2008-09 in the form of purchases claimed to be made from M/s Meet Enterprises. After examination of this party and details obtained by the Investigation Wing, it has been established that the payments made of Rs. 98,56,480/- in F.Y. 2008-09 for

purchases is nothing but accommodation entries. Bank account in the Punjab National Bank, Nehru Nagar, Ghaziabad in the name of M/s Meet Enterprises A/c No. 116002100028811 was also scrutinized by the Investigation Wing, Dehradun. It has been informed that the account opening form obtain from the PNB reveals that proprietor of M/s Meet Enterprises is Sh. Sunil Kumar s/o Sh. Lata Ram r/o 621/11 Mimplana Road, Muzaffar Nagar with business address at Meerut Road, Surju Chungi, Muzaffar Nagar. The statement of Sh. Sunil Kurnar was also recorded by the investigation Wing wherein be stated that he is a driver and that earlier he used to be a driver of Sh. Pushkar Tyagi r/o Shaibabad, Ghaziabad. It was stated by Sh. Sunil Kumar that on being asked by Sh. Pushkar Tyagi, he opened an account in the name of M/s Meet Enterprises signed bank cheque book at the behest of Tyagi. Further, Sh. Sunil Kumar submitted that apart from this he has no knowledge of M/s Meet Enterprises and its transaction.

ii. Further, the trade tax registration No. given at the time of opening of bank account was also got verified from tax department, Muzaffar Nagar and it was found that the registration No. mentioned in the registration certificate submitted to the bank at the time of opening of account is related lo M/s Kumar Traders, Meerut Road, Muzaffar Nagar and it was found that M/s Meet Enterprises is non-existent firm as per the record of trade tax registration department, Muzaffar Nagar.

iii. Information was also obtained from the PNB, Nehru Nagar, Ghaziabad regarding details and address of the banks/bank accounts from where amount has been credited/transferred to

this account as well as details of withdrawals from this account. The parties including the assessee being assessed with this circle namely, M/s GTM Builders & Promoters Pvt. Ltd. from whom cheques were deposited in this account were also examined by calling for their accounts and other details. Other Account of M/s Meet Enterprises with Axis Bank Ltd., Plot No. 3 Ambedkar Road. Nehru Nagar, Ghaziabad, A/c No. 095010200013086 was also examined. In this account of M/s Meet Enterprises address has been given at B-262, Nand Gram, ADA Colony, Ghaziabad. As per account opening form Sh. Sunil Kumar s/o Sh. Lala Ram is a Proprietor of M/s Meet Enterprises, B-262, Nand Gram. ADA Colony, Ghaziabad. As per these bank accounts, the assessee made payments amounting to Rs. 98,56,480/- to M/s Meet Enterprises during the year under consideration. The cheques received from the assessee as well as other parties were deposited in two bank accounts and after a few days or on the same day cash of almost the same amount was withdrawn or cheques were issued to different parties. The assessee, M/s GTM Builder and Promoters Pvt. Ltd. also examined in respect of transaction made with M/s Meet Enterprises by investigation wing, the assessee has submitted that it was contacted by Sh. Vikas Kumar, Prop. M/s Meet Enterprises, Ramdhan, Colony, Shivalik Nagar, Haridwar, TIN No. 05006640257 and purchases of Rs. 9856480/- of steel were made from M/s Meet Enterprises. Inquiries from trade tax department revealed that proprietor of this firm is Sh. Vikas Kumar s/o Sh. Vijay Pal Singh r/o 464/A, Keshwarpuri, Muzffar Nagar. Mr. Vikas was also examined and he stated that he used to run the business of M/s Meet Enterprises and that he only had one transaction in which he sold goods of M/s National

Trading Company, Roorkee and that he had no other business transaction he also declined to have any bank accounts with Axis Bank or PNB at Ghaziabad. These facts prove that the assessee has not substantiated the veracity of their claim of purchases made from M/s Meet Enterprises. From the facts discussed above, it is prima facie proved that the name of M/s Meet enterprises and the two bank accounts opened in its name have been used to facilitate / route accommodation entries to the assessee in lieu of cash. The cheques received from the assessee as well as from other parties have been deposited in accounts of M/s Meet Enterprises and further M/s Meet Enterprises have issued cheques to other parties. These cheques have been deposited in the respective bank accounts of the other parties / entities (20 parties), which are detailed in the information received from Investigation Wing, Dehradun. All these transactions in the banks reveal that before the issuance of cheque to these parties, different larger amount of cheques have been deposited in the respective bank accounts and substantial cash has also been withdrawn from this account which prima facie proved that these are also accommodation entries arranged through inter party transfer. In the bank accounts of these entities, a lot of cash have been deposited and corresponding cheques have been issued. On enquiry made by Investigation Wing, Dehradun, these parties were not in existence at their respective given address.

iv. Having, regard to above facts on record it has been concluded by the Investigation Wing that in actuality no real purchases have been made by this party as M/s Meet

Enterprises exists only on paper without any real business existence.

**1.2. Facts gathered during the assessment proceedings in respect of M/s Meet Enterprises:**

i. During assessment proceedings, the assessee was asked to explain the details of transactions made with M/s Meet Enterprises. Further the assessee was asked to produce the persons / party from whom purchases exceeding Rs. 10 lakhs was made along with confirmed copy of account from each party / person, copy of transportation of bill alongwith copy of challans for each delivery of purchases, their complete books of account and income tax records, bills of purchases and sales etc.

ii. In response, the assessee has failed to produce any of party including M/s Meet enterprises. However, the assessee has furnished copy of cheques issued to M/s Meet Enterprises, copy of purchase bills and weightage of M/s Meet Enterprises.

iii. To verify the claim of assessee in respect of purchases made from M/s Meet Enterprises, the Inspector was deputed to make spot enquiry and give his report in respect of this party. After making spot enquiry, the Inspector has reported that any entity in the name of M/s Meet Enterprises is not available in the entire Ramdham Colony, Shivalik Nagar, Haridwar. He also enquired from various persons to know whereabouts of M/s Meet Enterprises in the colony but no one was known of the entity in the name of M/s Meet Enterprises. The Inspector has further reported that the party M/s Meet Enterprises could not be

located in the entire Ramdham, Colony, Shivalik Nagar, Haridwar.

iv. In this regard, letter dated 29.11.2011 was sent to the assessee in which factual position reported by the Inspector in reaped of M/s Meet Enterprises was informed. It was also informed that in view of the facts as narrated above, it is crystal clear dial the claim of purchases made from this party is not proven to be genuine. Further, the assessee was asked to produce this party along with complete books of accounts, income tax records, bills of purchases and sales, bills of transportation of goods and challans.

v. in response, again the assessee has failed to produce any of party including M/s Meet enterprise. However, the assessee has again furnished copy of cheques issued to M/s Meet Enterprises, copy of purchase bills and weightage of M/s Meet Enterprises. I have examined the bills given by the assessee, on these bills address "Ramdham Colony, Shivalik Nagar, Haridwar" is mentioned. As reported by the Inspector and intensive enquiry made by the Investigation Wing Dehradun, the purchases claimed to be made from M/s Meet Enterprises appears to be bogus claim of the assessee as no entity in this name is found to be in existence at this address. In view of the above facts and circumstances, it is crystal clear that the claim of the assessee in respect of purchases from this party is not genuine, hence held as bogus expenditure claimed by the assessee.

**II. M/s Suman Enterprises, BH-80, Poorvi Shalimar Bagh, New Delhi:**

i. During the year, the assessee has claimed to have made purchases from M/s Suman Enterprises amounting to Rs, 1,50,26,303A. The assessee was asked to produce this party with the complete books of accounts and bills of transportation etc., which it has failed to do so.

ii. The Inspector was also deputed to make spot enquiry in respect of purchases made from M/ Suman Enterprises. The Inspector has reported that the aforesaid premises is situated in residential colony. At that premises, he met Smt. Rama age about 60 years. When he asked her about existence of M/s Suman Enterprises at that address, she told him that no business unit in the name of M/s Suman Enterprises exists in that premise. She further told that she residing with her family at that address for the last 15 years and no such unit was existed at that address any time. He further asked about knowledge of such business unit either run by her family members which she replied that no business activities are being run by his family members.

iv. In this regard, letter dated 29/11/2011 was sent to the assessee which factual position reported by the inspector in respect of M/s Suman Enterprises was informed. It was also informed that in view of the facts as narrated above, it is crystal clear that the claim of purchases mode from this party is not proven to be genuine. Further, the assessee was asked to produce this party alongwith complete books of accounts, income tax records, bills of purchases and sales, bills of transportation of goods and challans.



v. In response, the assessee has furnished copy of ledger of accounts of this party from its own books showing payment of Rs. 43 lakhs to this party during the year and closing balance of Rs. 1,07,26,303/- and bills of purchases having the name of M/s Suman Enterprises and the same address which was given earlier (as above). Upon perusal of these bills, it appears that each bill is for the purchases of "Steel" from M/s Suman Enterprises, for more than Rs. 1 lakh amount.

vi. Thereafter, enquiry in respect of cheques issued to M/s Suman Enterprises from the bank of assessee (GTM) was made, requesting to provide the details of transferee and account in which the cheques got credited in the account of M/s Suman Enterprises. On the basis of information provided by the banks of assessee. Information in respect of bank account number, bank statement for the period under consideration alongwith account opening form of M/s Suman Enterprise were called for and obtained by issuing summons/notice u/s 133(6) of the Act to Kotak Mahindra Bank, Old Rajendra Nagar, Delhi. Upon perusal of the account opening form it was noticed that proprietor of M/s Suman Enterprises is Shri Amit Vashisht Son of Sh. Ravindra Kumar Vashisht residence of 1BH-80, Poorvi Shalimar Bagh, Delhi 110088. Summon u/s 131 of the Act. dated 29/11/2011 was issued to Sh. Amit Vashisht. In response, Shri Amit Vashisht attended the office on 21/12/2011 and his Statement on oath was recorded. In his statement he has stated that he is only 5th class passed and residing with his father Sh. Ravindra Kumar Vashisht, mother Smt. Kama Vashisht and his elder brother Sh. Yogesh Vashisht and his wife Smt. Sapna Vashisht at the aforesaid address. Further he stated that he is

employed with Sh. M.A. Khan (property dealer) for a monthly salary of Rs. 5,000/- for the last three months. Further he stated that earlier, he was not used to do any work and all expenses were born by his father who is retired from St. Stephens College. When he was asked about M/s Suman Enterprises and the business run in the name of M/s Suman Enterprises, he replied that a concern namely, M/s Suman Enterprises was registered at his residential address which was being run by a person namely, Sh. Deepak who is residing at somewhere in Shahdara, Delhi. Further, he stated that on being asked by Sh. Deepak, he signed some documents, because Sh. Deepak assured me to give some good job for good salary. Further /stated that sometime he signed some cheques on instruction of Sh. Deepak. Further he stated that apart from this he has no knowledge of M/s Suman Enterprises or its transactions. In his statement he has categorically denial to have done any kind of business either in the name of M/s Suman Enterprises or any other business entity else. On being asked by Sh- Deepak, blank cheque book was signed by him. He further stated that he never heard the name of M/s GTM Builders & Promoters Pvt. Ltd. earlier.

vii. Bank Statement of M/s Suman Enterprise has also been obtained by issuing summons/notice u/s 133(6) of the Act. Upon perusal of the bank statement, it received that cheques issued by the assessee (GTM) have been deposited/credited in this account and after few days or on the same day cash are withdrawn or funds have been transferred to other accounts. Total transaction in the hank appears to be around of Rs. 60 to 70 Crores during the year under consideration alone.

viii. As reported by the Inspector after making intensive enquiry, Statement of the so called prop, Sh. Amit Vashisht and other corroborative evidences as discussed above, the purchases claimed to be made from M/s. Suman Enterprises appears to be bogus claim of the assessee as no such entity is found to be in existence for actual business and name of Sh. Amit Vashisht is being used for providing accommodation entries only. In view of the above facts and circumstances, it is crystal clear that the claim of the assessee in respect of purchases from this party is not genuine/hence held as bogus expenditure claimed by the assessee.

**III. M/s Durga Enterprises, near Bus; Stand Daultabad, Gurgaon**

i. The assessee has shown to have purchased of steel bar of Rs. 49,12,514/- from M/s Durga Enterprises during the year under consideration, the assessee was asked to produce this party with the complete books of accounts and bills of transportation etc. which it has failed to do so.

ii. The Inspector was also deputed to make enquiry in respect of claim of purchases of the assessee. The Inspector has reported that no entity in the name of M/s Durga Enterprises exists at entire village Daultabad, Gurgaon. He also enquired from the persons established for many years around in locality of this village who also confirmed that such entity under the name and style was not around any time, neither at present nor in the past.

iii. In this regard, letter dated 29/1 1/2011 was sent to the assessee which factual position reported by the Inspector in respect of M/s Durga Enterprises was informed. It was also informed that in view of the facts as discussed in the report of Inspector; the claim of purchases made from this party is not proven to be genuine. Further, the assessee was asked to produce this party alongwith complete books of accounts, income tax records, bills of purchases and sales, bills of transportation of goods and challans.

iv. In response, the assessee furnished only confirmed copy of account from someone Sh. Yoginder, showing the person as proprietor of M/s Durga Enterprises.

v. I have examined the confirmation furnished by the assessee in this regard. No other requisite details have been furnished by the assessee. The assessee has failed to produce the party concerned with the requisite complete books of accounts, income tax records, bills of purchases and sales, bills of transportation of goods and challans. Therefore, the genuineness of claim of the assessee in respect of purchase from this party could not be verified. As reported by the Inspector after making intensive enquiry and other corroborative evidences as discussed above, the purchases claimed to be made from M/s Durga Enterprises appears to be bogus claim of the assessee as no entity in this name is found to be in existence at this address. In view of the above facts and circumstances, it is crystal clear that the claim of the assessee in respect of purchases from this party is not genuine, hence held as bogus expenditure claimed by the assessee.

**IV. M/s Bharat Trading Company, 338, West Amber Talab, Roorkee:**

i. The assessee has shown to have purchase steel bar of Rs. 37,91,821/- from M/s Bharat Trading Company. The assessee was asked to produce this party with complete books of accounts and bills of transportation etc., which it has failed to do so.

ii. The Inspector was also deputed to make spot enquiry in rasped of M/s Bharat Trading Company, 338, West Amber Talab, Roorkee. The Inspector has reported that this premises belongs to Sh. Devender Sharma who is working on the post of TGI in Hydel Department, Uttranchal and he is residing at the said premises since 1983 and since then they have not given the premises on rent to anybody. He further stated that he is working in government department and has not done any business activity in the name of either M/s Bharat Trading Company or anybody else. The inspector has also made local enquiry/ and it came to notice that information given by the land lord, Sh. Devender Sharma is correct.

iii. In this regard, letter dated 29/11/2011 was sent to the assessee in which factual position reported by the Inspector in respect of M/s Bharat Trading Company, 338, West Amber Talab, Roorkee was informed. It was also informed that in view of the facts as discussed in the report of Inspector, the claim of purchases made from this party is not proven to be genuine. Further, the assessee was asked to produce this party alongwith complete books of accounts and income tax records, bills of

purchases and sales, bills of transportation of goods and challans.

iv. In response, bills of purchases having the name of M/s Bharat Trading Company, some weighing bills and copy of cheque issued to M/s Bharat Trading Company have been filed. Upon perusal of these bills, it appears that each bill is for the purchases of "Steel" from M/s Bharat Trading Company. The address of this party on these bills is "338, West Amber Talab, Roorkee". One thing is necessary to point out here that the address of this party is the same for which Inspector has reported that no such party was in existence at this given address. Further, the assessee has failed to produce the party concerned with requisite complete books of accounts, income tax records, bills of purchases and sales, bills of transportation of goods and challans. Therefore, the genuineness of claim of the assessee in respect of purchases from this party could not be verified as no entity in this name is found to be in existence at this address.

v. In view of the above facts and circumstance, it is crystal clear that the claim of the assessee in respect of purchases from this party is not genuine, hence held as bogus expenditure claimed by the assessee.

4. Further, vide letter dated 26.12.2011. the assessee has also furnished a certificate dated 22.12.2011 from Architect confirming the use of iron/ steel for construction of the building at project site at GTM Forest & Hills Dehradun and copy of receipt issued by the contractors about construction material taken towards construction at project site at Mokhampur, opp.

IIP Dehradun in the year under reference. Confirmation from various contractors of Assessee Company in respect of supply of steel bars from the above parties has also been furnished.

5. In this regard, it is very necessary to mention here that the assessee was asked to furnish the followings, vide order sheet entry dated 11.10.2011:

a. The copy of project report with respect of the total cost of the project and the anticipated realization in respect of each project, separately.

b. The details of closing stock for each project and furnish the certificate of approved Engineer/architect in respect of work in progress for each project.

c. Stage wise cost for each project.

6. The assessee has failed to furnish the above requisite details during the assessment proceedings despite it was asked again to furnish the same, vide this office letter dated 16.11.2011. Since, the assessee has not provided the overall information in respect of each project, the certificate of approved Engineer/architect and stage wise cost of each project, the certificate from Architect obtained as on date has no relevancy and appears to be a afterhough step. It is considerable fact that non of Architects can find out/estimate the actual material/steel bar used in construction of any building after 2-3 years back. Further, the confirmations of the contractors has not been supported by any supporting evidence which could prove that they got received the material from the aforesaid parties. Therefore, the same cannot be considered to

be genuine one as the purchases from all four parties, M/s Meet Enterprises, Suman Enterprises, Durga Enterprises and Bharat Trading Company have not been proven to be genuine one, as discussed above.

7. In view of the above facts, all above entities, from whom the assessee claimed to be purchased the steel bar, are nothing but on paper entities only which are providing accommodation entries by issuing bogus sales bills on account of which the assessee as well as other parties (buyers) could inflate its expenditure and reduce profits. Having regard to the above discussion, the entities namely, M/s Meet enterprises, Suman Enterprises, Durga Enterprises and Bharat Trading Company are proven as bogus entities and accordingly, purchases from these parties are held as bogus claim of purchases for which the assessee company has no justification and explanation. Therefore, the amount of purchases claimed to be made from these parties is disallowed and added back by applying the provisions of Section 69C of the Act, out of total purchases claimed to be made by the assessee company, and considered as undisclosed income in the hands of the assessee company for the year under consideration.

5. During the course of appellate proceedings, the appellant gave detailed arguments vide written submissions dated 30.01.2013. The same is reproduced hereunder:

**“BACKGROUND**

The appellant company is engaged in the business of building construction and real estate development. It filed its return of income on 30.09.2009 declaring income of Rs. 30,81,872./-.



The Assessing Officer has completed the assessment u/s 143(3) of the IT Act on a total income of Rs. 3,66,68,990/-. In this assessment order the Ld. Assessing Officer has made an addition of Rs. 3,35,87,118/- by alleging the purchase of building material made from various parties as bogus.

### **SUBMISSIONS**

The only ground of appeal taken by the appellant in this appeal relates to the action of the Assessing Officer in treating the purchases of building material made from the following parties as bogus and making addition of the same in the assessment order:

• M/s Meet Enterprises	Rs. 98,56,480/-
• M/s Suman Enterprises	Rs. 1,50,26,303/-
• M/s Durga Enterprises	Rs. 49,12,514/-
• M/s Bharat Trading Company	<u>Rs. 37,91,821/-</u>
	<u>Rs. 3,35,87,118/-</u>

Holding that the denial of dealer's request to cross-examine wholesale dealers was a denial of fair hearing, the Supreme Court stated that it was only through cross - examination that the assessee could establish that what mentioned in his account books was correct and that mentioned in the accounts of whole sale dealers was wrong. The Hon'ble Supreme Court in the case of Bhupinder Pal Singh (2003) Supreme Court Cases 633 has held as under:

"it appears to us that no opportunity was given to the appellant either during the inquiry made for the first time or in the second inquiry. Since the order passed is in clear violation of

principles of natural justice, it is unnecessary for us to go into the merits of the order contentions raised. In the normal course, we would have set aside the order giving liberty to the respondents to hold a fresh inquiry. Since the appellant has superannuated and at this length of time, we think it is neither appropriate nor desirable to direct a fresh inquiry”.

It was observed by the Apex Court that an order passed in violation of the principles of natural justice is a nullity as held in A.K. Kraipak vs. Union of India AIR- 1970 SC-150 RB, Shree Ram Durga Prasad and Fatesh Chand vs. Settlement Commissioner 1989-SC-1038.

The party wise submissions are made as under:

1. M/s Meet Enterprises Rs. 98,56,480/-

It is submitted that the Ld. Assessing Officer has made the disallowance of expenditure on account of purchases of building material made for Dehradun project from M/s. Meet Enterprises amounting to Rs. 98,56,480/- by mainly relying on the report of the Investigation Wing of the Department that GTM Builders and Promoters Ltd received accommodation entries in the form of purchases. Further, the AO during the course of assessment proceedings required the appellant to produce the party for verification of genuineness of transaction but the party was not produced. The AO however noted in the assessment order that the appellant has furnished copy of cheques issued to Meet Enterprises, copy of purchase bills and weightage bills of Meet Enterprises.

It is submitted that the first allegation of the AO is that Investigation Wing of the Department has information that the appellant has received accommodation entries. The appellant is not aware of any such information as it has not been confronted with it. Therefore, no value can be attached to the report of the Investigation report as the same has not been confronted with the appellant. Reliance in this regard is placed on the following decisions:

Opportunity to cross examine the witness of revenue

We respectfully state that it is illegal and gross violation of principle of natural justice. It would not be out of place to refer to the decision of Hon'ble Jurisdictional High Court of Delhi & Hon'ble Apex Court of India to contend that this is gross violation of principal of natural justice and the onus is on revenue to produce its witness for cross examinations.

The Hon'ble High Court of Delhi in the case of CIT Vs. S.M. Aggarwal reported in 2007-293-ITR-43 held that:

"It is well settled that the only person competent to give evidence on the truthfulness of the contents of the documents is the writer thereof. So unless and until the contents of the document are proved against a person, the possession of the document or hand - proved against a person on such document by itself cannot prove the contents of the document."

Reliance is also placed on the decision of Gujarat High Court in the case of Heirs and Legal Representatives of Late Laxmanbhai S. Patel Vs. Commissioner of Income Tax vide citation no. is [2008] 174 Taxman 206 (GUJ) wherein it was held that the

Assessing Officer has placed heavy Reliance while making addition on the third party statements for which the appellant was not given an opportunity of cross examining. Therefore, the addition made is held to be unjustified.

Further, the Delhi High Court in the case of Commissioner of Income Tax Vs. Rajesh Kumar vide citation no. [2008] 112 Taxman 74 (Delhi) dated April 4, 2008 wherein it was held that it is quite clear that material collected by the revenue behind the back of the assessee was used against him without disclosing that material to him or giving any opportunity to the assessee to cross-examine the person whose statement has been used by the revenue against the interest of the assessee.

Reliance is also placed on the following judgments of the Hon'ble High Court of Delhi and Hon'ble Supreme Court of India wherein it was held that:

"Not providing copy of adverse material, statements, opportunity to cross examine, opportunity to rebut the claim of revenue is gross violation of principal of natural justice. The addition made by Assessing Officer cannot be sustained."

- 2008 -306 ITR 35 (Del) CIT Vs. Real Time Marketing Pvt. Ltd.
- 2009 -315 ITR 265 (Del) CIT Vs. Jindal Vegetable Products
- 1985 - AIR - 1416 (SC) U.O.I. Vs. Tulsi Ram Pate
- 218 - IT- 721 (SC) Vasant C. Lal Vs. CIT

The next allegation is that Shri Sunil Kumar, Proprietor of M/s. Meet Enterprises has stated that he has no knowledge of the said firm. The appellant has no comments to offer on this as it is an internal matter of the said firm. The AO has further

alleged that the said firm was not existent. At the same time, the AO states that cheques were deposited in its account and withdrawals were made. How can the Bank open account if the party is not existent.

The AO has also stated in the assessment order that Investigation Wing has informed that the appellant received accommodation entries of Rs. 98,56,480 in FY 2008-09 in the form of purchases claimed from M/s. Meet Enterprises. According to Investigation Wing : i) the bank account shows that one Sh. Sunil Kumar is the proprietor of Meet Enterprises; ii) Sh Sushil Kumar is a driver and he has no knowledge of Meet Enterprises iii) trade tax registration No. given in the bank account pertained to M/s. Kumar Traders iv) The cheques received from the appellant were deposited in two bank accounts and after a few days or on the same day, cash of almost the same amount was withdrawn or cheques issued to different parties v) one Mr. Vikas stated that he used to run the business of Meet Enterprises and that he had only one transaction in which he sold goods to National Trading Co. On the basis of these facts the Investigation Wing concluded that the name of Meet Enterprises has been used to facilitate/route accommodation entries by the appellant.

A look at the above clearly shows that there is lot of inconsistencies involved. According to Investigation Wing, Meet Enterprises had entered into transactions with other parties also (last portion of para (iii) on page 14). This shows that the appellant was not only the party who had transactions with Meet Enterprises and, therefore, the appellant had no doubt about the genuineness of the party at the time of entering into

transactions with it. Further, at one place the AO writes that on enquiry from the Trade Tax Department it was known that Meet Enterprises is non-existent firm as per their records (para ii on page 3). At the same time in the middle of para (iii) on page 4, the AO states that enquiries from Trade Tax Department revealed that Proprietor of Meet Enterprises is Vikas Kumar. Mr. Vikas admits that he used to run the business of Meet Enterprises and that he had only one transaction. At the same time the fact that the appellant had entered into transactions with Meet Enterprises is not in dispute. Therefore, the statement of Mr. Vikas is not reliable. Thus which contention of the Assessing Officer is to be taken as correct? All these facts and the other facts stated by the AO cannot lead to the conclusion that no real purchases have been made by the appellant as stated by the appellant especially when the appellant has not been confronted with the report of Investigation Wing and the various statements relied upon.

Based on the above report, the AO asked the appellant to produce the party, file copy of transportation bill, copy of challans, bills of purchases and sales, books of account etc. The appellant furnished copy of cheques issued to Meet Enterprises, copy of purchase bills and weightage bills as already noted by the AO in the assessment order. The AO deputed the Inspector to make spot enquiries who reported that Meet Enterprises is not available at the address given. The AO again required the appellant to produce the party and file copy of bills of purchases and sales. The appellant again filed the copies of cheques and bills etc. already filed before the AO. As regards producing the party before the AO, the appellant could not do

this as it could not enforce attendance of a person under any law as that power is vested with the Assessing Officer. Simply on the ground that the party is not available or it was not produced, the AO has disallowed the claim.

As stated above, the appellant has not been confronted with the findings of the Investigation Wing by allowing opportunity to it for cross examining the persons whose statement the Investigation Wing has used against the appellant. In view of this very fact, the findings of the Investigation Wing cannot be made use of against the appellant. As regards the genuineness of the purchases made from Meet Enterprises, the appellant has filed before the AO copy of cheques issued to it towards settlement of bills, copy of bills and other documents in support. It is quite amazing as to how the cheques issued by the appellant have been encashed by Meet Enterprises if it was a non-existent entity or if it was not traceable at the relevant point of time. It is quite possible that by the time the AO made enquiries the party must have shifted/closed down its business. But that cannot be a reason for treating the purchases made by the appellant from the said party as bogus when supporting documents have duly been furnished by the appellant.

Further, it is submitted that the appellant has approached the party for supply of construction material. The Investigation Wing of the Department must have found the parties to be bogus. The appellant was not aware whether the parties are genuine or otherwise, As far as appellant is concerned the fact remains that the appellant has purchased the goods/material without which it could not have undertaken the construction activities. If one goes by the views of the Assessing Officer that

the purchase were bogus, then, from where the material has come for constructions purpose, a question which the AO has ignored while taxing the profit from the construction activities. It is not the case of the Assessing Officer that the appellant has not carried out any construction activities during the year under consideration. The AO has not accepted the architect's report submitted by the appellant and vouchers showing material received & supplied to contractors, copy of Purchase Bills which show the TIN, Truck No. Mobile No. of the Parties and VAT deducted, copy of cheques issued, purchase bills and weightage bills and confirmation of the parties from whom purchases were made and various other documents submitted by the appellant running into more than 50 pages in support of its case.

2. M/s Suman Enterprises Rs. 1,50,26,303/-

In respect of this party, there is no adverse report of Investigation Wing. Here also the Ld. Assessing Officer has made the disallowance of expenditure on account of purchases of building material made from M/s Suman Enterprises amounting to Rs. 1,50,26,303/- in respect of Dehradun project by alleging that the said party was not produced for verification of genuineness of transaction by relying upon Inspector's report that the party is not existing on the given address.

The AO has stated in the assessment order that on enquiry by the Inspector at the address given it was gathered from one lady namely Smt. Rama that she had no knowledge of any business of Suman Enterprises. The AO required the appellant to produce the party and file copy of bills of purchases and sales. The appellant filed the copies of ledger accounts and bills



etc. As regards producing the party before the AO, the appellant could not do this as it could not enforce attendance of a person under any law as that power is vested with the Assessing Officer.

The AO again made enquiries from the bank from which it was gathered that the proprietor of Suman Enterprises is one Sh Amit Vashist who was issued summons u/s 131 and his statement was recorded. In his statement he admitted that Suman Enterprises was registered at his residential address which was run by one Deepak and that Amit signed some documents including cheques as Deepak assured him some good job. Sh Amit further stated that he did not know the appellant company. It will be seen that here also first the lady Smt. Rama categorically denied to have any knowledge of Suman Enterprises. Subsequently her son Amit admitted that the said concern was registered at the said address. Therefore, the report of the Inspector that no such firm existed at the address is incorrect as the report was not based on proper enquiry. In order to escape from the clutches of the Departmental enquiry, Amit gave some vague reply like signing blank cheques on instructions of someone with an assurance to get a job etc. which is unbelievable. The admission of Sh Amit that it did know the appellant company supported the fact that no collusive arrangement could have been made with the said person/firm. The AO has been swayed away by the Investigation Report in the case of Meet Enterprises though no such report is available in the case of Suman Enterprises. The contention of the AO that the bills produced by the appellant only showed the item '1steel' only supported the case of the appellant as for construction

activities steel is one of the main material. The other allegations of depositing cheques and subsequent withdrawals are common in such type of business and it cannot carry any adverse view.

It will be seen from the above that simply on the ground that the party is not available or it was not produced, the AO has treated the purchases as bogus without attaching any importance to the documents produced by the appellant. As per AO's own version the firm Suman Enterprises existed at the address, there is a proprietor by the name of Sh Amit who used to sign the cheques and other documents. The cheques issued by the appellant have been duly credited and accounted for in the account of the said firm. It is quite unnatural that a person signing huge cheques would not know for what and why he is signing the cheques. Therefore, the ignorance expressed by Sh Amit, the proprietor of the firm is baseless.

Be that it may, the appellant has not been confronted with the statements of the said Amit and therefore, no value can be attached to the averments made in his statement. The fact remains that the appellant has made purchases from the said party, has issued cheques to it which has been encashed by the party, the appellant has utilized the material so purchased in its business. Simply because the party is not available at the address given, a fact which has been proved to be otherwise, it cannot be a reason for treating the purchases made by the appellant from the said party as bogus when supporting documents have duly been furnished by the appellant.

3. M/s Durga Enterprises Rs.49,12,514/-

In this case also there is no adverse report of investigation Wing. The Ld. Assessing Officer has made the disallowance of expenditure on account of purchase of building material made from M/s Durga Enterprises amounting to Rs. 49,12,514/- in respect of Dehradun project by alleging that the said party was not produced for verification of genuineness of transaction. As regards producing the party before the AO, the appellant could not do this as it could not enforce attendance of a person under any law as that power is vested with the Assessing Officer. No enquiries have been conducted by the AO from the bank etc. as has been done in the case of Suman Enterprises to come to his conclusion that "it is crystal clear that the claim of the assessee in respect of purchases from this party is not genuine" despite the fact that the appellant filed confirmation from the party in question. The AO has been carried away by the investigation report in the case of Meet Enterprises and without making any effort by sending summons to the party or calling information u/s 133(6), he has jumped to the conclusion on the basis of Inspector's report that the party is not existent at the address and also ignoring the various documents filed before him.

As stated earlier, it is quite possible that by the time the AO made enquiries the party must have shifted/closed down its business. But that cannot be a reason for treating the purchases made by the appellant from the said party as bogus when supporting documents have duly been furnished by the appellant.

#### 4. M/s Bharat Trading Company Rs. 37,91,821/-

Here also there is no adverse report of Investigation Wing. The Ld. Assessing Officer has made the disallowance of expenditure on account of purchase of purchase of building material for Dehradun project by alleging that party M/s Bharat Trading Company was not produced for verification of genuineness of transaction and also relying on the inspector's report that party was not existing on the given address. As regards producing the party before the AO, the appellant could not do this as it could not enforce attendance of a person under any law as that power is vested with the Assessing Officer. No enquiries have been conducted by the AO from the bank etc. as has been done in the case of Suman Enterprises to come to his conclusion that "it is crystal clear that the claim of the assessee in respect of purchases from this party is not genuine" despite the fact that the appellant filed bills of purchases, weighing bills and copy of cheque issued to the party in question. As stated above, in this case also the AO in his mind kept the Investigation Report in the case of Meet Enterprises to draw such a conclusion and without making any effort by sending summons to the party or calling information u/s 133(6), he has jumped to the conclusion on the basis of Inspector's report that the party is not existent at the address and also ignoring the various documents filed before him. In the case of Suman Enterprises, the AO has already found that the report of the Inspector is not reliable as it was proved to be otherwise. But again the AO continued to give weightage to the report of the Inspector instead of making concrete enquiries from bank etc. He also gave no consideration

that without purchase of material the appellant could not have done construction activities.

The Assessing Officer also required the appellant to furnish copy of project report, details of closing stock, certificate of architect in respect of each project. In response to this the appellant filed certificate of approved architect and confirmation from the contractors. But the AO did not believe the certificate of approved architect as according to him this cannot show the correct position that prevailed 2-3 years ago. Further, the confirmations of the contractors also did not find favour with the AO as it was not supported by any evidence. The AO, therefore, concluded that the purchases made from all the above parties are bogus with a view to inflate the expenditure and reduce the profit.

As stated above, the appellant has produced/furnished all the necessary documents available with it in support of its claim. The very crucial evidence that was furnished by the appellant in support of the use of the so-called materials purchased from the above parties has been brushed aside on flimsy grounds. Further, the confirmations from the contractors have also been ignored. If the AO doubted about its veracity, he could have summoned the said contractors/architect for examination and then come to a conclusion that they are not reliable. That not having done, the conclusion arrived at by the AO is without appreciating proper evidence on record and just only clinching on the report of the Investigation Wing without confronting it to the appellant. The AO chooses to record statement of some persons and without confronting it with the appellant uses against the appellant and at the same time he does not record

the statement of the architect/contractors which would have tilted the case in favour of the appellant. The AO has been swayed away by the report of the Investigation Wing of the Department, which as stated above, is not a reliable one as it was based on some statements recorded behind the back of the appellant and not confronting it with the appellant.

Reliance in this regard is placed on the following decisions:

1. Hon'ble ITAT, Ahmedabad Bench in the case of ITO v Sanket Steel Traders (2937/Ahd/2008) held in para 8 of its order that:

"We have considered rival submissions and perused the material placed before us. First we shall consider the addition of Rs. 26,76,559/- made by the Assessing Officer as/unexplained payment. We find that the Assessing Officer in this case has made a thorough investigation. He had taken pain to trace the payment for purchases made by the assessee from the bank account and at page no. 5 of the assessment order has recorded the finding with regard to each payment, perusal of which clearly shows that the entire payment made by the assessee was by cheque and was debited in the assessee's bank account. Since the assessee has made the payment by cheque, which is duly debited in the assessee's bank account, the same cannot be said to be unexplained payment. Therefore, in our opinion, there was no justification for making the addition of Rs.26,76,559/- as unexplained payment."

2. Hon'ble Gujarat High Court in the case of CIT v. Sathyanarayan P. Rathi 2013-(ITI)-GJX-0133-GUJ.

In this case the assessee is in the business of trading in iron and steel. For the AY 2003-04 during the reassessment proceedings it was found that the purchases worth Rs. 61.40 lakhs were not supported by sufficient evidence. The assessee's claim of having purchased such goods from various suppliers was verified but was not found genuine. It was found that such parties had never supplied the goods as named by the assessee. On such basis the AO made addition of the entire amount of purchase of Rs. 61.40 lakhs. The CIT (A) added only profit element and not the entire amount of purchase. The Tribunal gave further relief to the assessee.

In this background the Hon'ble High Court held as under:

"The present case, thus, being one of only purchase but not from disclosed sources, it would be only the profit element embodied in such purchase which could be added in the income of the assessee and, thus, rightly so done by the CIT(A) and the Tribunal.

3. Hon'ble ITAT Ahmedabad in the case of Simit P Seth I/h of Shri Pankaj J Seth v. ITO ITA No. 3238 and 3239/Ahd/2009

The issue in this case relates to confirmation of addition of Rs. 12.71 lakhs on account of alleged bogus purchase of the assessee.

It was held by the Hon'ble Tribunal that:

“Having heard the submissions of both sides, we have been informed that the malpractice of bogus purchase is mainly to save 10% sales tax etc. It has also been informed that in this industry 2.5% is the profit margin. Therefore, respectfully following the decisions of the coordinate bench pronounced on identical circumstances, we hereby direct that the disallowance is required to be sustained at 12.5% of the purchase from those parties.”

6. During appellate proceedings the appellant has further submitted that:

“The AO while making the disallowances out of the purchases of construction material purchased (Debit side) by the assessee by treating some of the parties as bogus, the AO should have also deleted the corresponding amount accounted as work-in-progress/closing inventories as well as stocks and consequently the assessable income of the assessee, particularly when the assessee is regularly recognizing revenue by adopting construction linked percentage completion method as per Accounting Standard-7. The action of the Assessing Officer in not allowing aforesaid effect is arbitrary, illegal, unjustified and against the provisions of law.”

4. Before us, the Id. CIT DR argued that based on the order of the Assessing Officer and the Id. AR relied on the order of the Id. CIT (A).

5. Heard the arguments of both the parties and perused the material available on record.



6. We find that the AO has disallowed the purchases made from the four parties namely, M/s Meet Enterprises, M/s Suman Enterprises, M/s Durga Enterprises and M/s Bharat Trading. Primarily, we find that the AO has relied on the information collected by the Investigation Wing and no opportunity to cross examine the parties has been afforded which is a violation of principles of natural justice. The assessee has provided copies of purchase bills, weightage bills and architect certificates. The AO has not reasoned that the bills or the certificate of the architects are bogus and wrong on facts.

7. As per accounting standards AS-7, the purchases and working progress have to be reconciled along with architect report. The AO has not rejected the books of accounts and accepted the book profits while making the addition. The Assessing Officer's observation that none of the architects can find out the actual material, steel bars used construction of any building of 2 to 3 years cannot be accepted as the consumption of the material can be well estimated from the drawings and the site books. In the case of M/s Suman Enterprises, the statement of Amit Vashisht indicates that the firm has been registered and run by Shri Deepak, no further enquiries have been conducted. In the case of M/s Meet Enterprises, the statement of Shri Sunil Kumar was recorded but nowhere it reveals or confirms that the purchases were bogus or inflated. There was no doubt about the payments made by the assessee to these parties and no evidence of cash withdrawals have been brought on record. The Assessing Officer contentions that non-production of parties can give credence to the bogus nature of the purchases cannot be accepted. In this regard, reliance is placed on the decision of

Hon'ble High Court of Bombay in the case of B.C. Borana Vs ITO 282 ITR 252. In the case of M/s Suman Enterprises, the Inspector report cannot be given credence as the party was found to be genuine on enquiry. The better way for the AO could be to enquire about the amounts received from the assessee and from such amounts, if any, purchases of material have been made which in turn supplied to the assessee. The non-purchase of material/non-utilization of the amounts for purchase of material by the suppliers would be an appropriate evidence to disallow this purchases but the same has been wanting. Reliance is placed on the judgment of Hon'ble jurisdictional High Court in the case of CIT Vs Rajesh Kumar 172 taxmann.com 74 wherein it was held that failure to follow principles of natural justice vitiate the proceedings. Reliance is placed on the order of Hon'ble High Court of Bombay in the case of CIT Vs Nikunj Eximp Pvt. Ltd. 2013 TIOL 04 wherein it was held that no addition is warranted based on the fact that the suppliers have not appeared before the AO.

8. Hence, keeping in view the entire facts and circumstances of the case, evidence on record, we decline to interfere with the order of the Id. CIT (A) in deleting the addition.

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

Order Pronounced in the Open Court on 08/02/2021.

Sd/-

**(Amit Shukla)**  
**Judicial Member**

**Dated: 08/02/2021**

\*Subodh\*

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**