

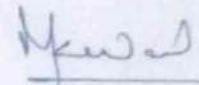
- Andaman Timber Industries vs Commissioner of Central Excise (2015) 94 CCH 187 (SC), (2015) 281 CTR 241 (SC).
- SKM Animal Feeds and Foods (India) Pvt. Ltd. vs ACTT (2024) 464 ITR 213 (Mad.).
- ACIT vs Dr. Ram Narayan Kalra in ITA no. 4476/Del/2012 order dt. 14.8.2015.
- Ankit Metal & Power Ltd. Vs JCIT (2019) 56 CCH 251 (Kol. Trib.)
- Prarthana Construction (P.) Ltd V. DCIT [2001] 118 Taxman 112 (Ahd.).

As regards ground no. 3

This ground of appeal assails that the initiation of reassessment proceedings and the consequent reassessment order passed by AO is illegal inasmuch as the reassessment proceedings were completed without providing certified copy of sanction accorded by appropriate authority. In this regard, it is submitted that:-

- 3.1 Since the appellant was not provided with copy of sanction accorded, reliance is placed on notice u/s 148 dt. 27.03.2022 (page no. 229) wherein AO has mentioned that the said notice is passed after obtaining prior approval of Pr. CIT-1, Patna.
- 3.2 However, copy of the said approval was not provided to the appellant, even after specifically requesting for the same vide its reply dt. 28.01.2023, copy whereof is enclosed herewith (page no. 230).
- 3.3 In absence of certified copy of approval granted by competent authority, the appellant is unable to verify the satisfaction recorded by the approving authority. Thereby, precluding the appellant from exercising its right to file objections against the same.
- 3.4 Para 2.2 of Guideline dt. 01.08.2022 issued by CBDT mandates that approval of the specified authority is required to be provided to the assessee along with the notice u/s 148. This mandatory condition of law and the directions of CBDT have also been violated by the AO.
- 3.5 The appellant places reliance on the ratio laid down in the following cases, where if approval u/s 151 is not provided, consequent reassessment proceedings rendered illegal: -
  - Saraswati Garewal vs ITO, ITA No. 166/RPR/2022 dt. 25.10.2023, relevant finding in para 10, PN 415-425 of PB-II, relevant findings at PN 424.
  - Haryana Acrylic Manufacturing Co. 308 ITR 38 (Del.).
  - ACIT vs Bharti Axa Life Insurance Co. Ltd. (2021) 189 ITR 450 (Mum.), para no.4.9.2.
  - ITO vs IDM Agro Bio Tech Ltd. (2017) 51 CCH 525 (Mum.), in ITA no. 5805/Mum/2017 dated 04.12.2017, para 22 & 27.

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down. For this proposition, appellant places reliance on the ratio laid down in following cases: -

- Anantpur Kalpana vs ITO (2022) 194 ITD 702 (Bang.).
- DCIT vs M/s M.C. Hospital (2022) 197 ITD 706 (Chennai).
- ACIT vs Vishal Exports Overseas Ltd. in ITA No. 790/Ahd./2005 dt. 07.08.2009, affirmed by Hon'ble High Court in ITA No. 2471 of 2009 dt. 03.07.2012.
- ITO vs Parmanand Gupta, ITA ITA no. 82/RPR/2017 dt. 04.08.2022.

#### 2.5 No enquiry by AO

In support of the transaction, appellant submitted all the legal and cogent evidences required to substantiate that the transactions are genuine. However, once such documents were submitted, and when the allegation was disputed by the appellant, the legal and cogent evidences could not have been discarded by the AO in absence of any enquiry made by the AO. During the assessment proceedings, the AO made addition without making any enquiry whatsoever, which is illegal. Assuming without admitting that information was available with the AO, but when the appellant placed legal and cogent evidences before him, no addition could have resulted only on the basis of information which was available with AO. The AO did not conduct any enquiry even on the basis of details of the buyer given by appellant.

A perusal of the statements relied upon by the AO shows that it does not implicate the transaction of appellant on the basis of any evidence or material. Since nobody in their statement have accepted on oath that M/s. Rajendra Ispat was engaged in providing accommodation entries, such statements are liable to be ignored and excluded for the purpose of present adjudication. Therefore, nothing positive remains against the appellant.

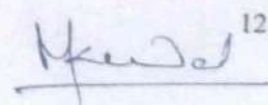
#### 2.6 Sec. 68 not applicable

The AO has treated the amount received against sale proceeds as unexplained cash credit invoking sec. 68. It is submitted that sec. 68 applies only to such items which are not being considered/treated by an assessee to be of income character and which the AO wants to treat as income of assessee. Therefore, provisions of sec. 68 will apply only in cases where assessee does not offer the amount so received as its income. In the case of appellant, the amount received from M/s. Rajendra Ispat was against sales and such amount is already credited to profit and loss account. Once the amount is credited to the profit and loss account, there was no reason for the AO to have very re-characterized it as unexplained cash credit u/s 68.

#### 2.7 No cross examination allowed

Although, as per the statements provided to the appellant, no body has accepted indulging in bogus activity on behalf of m/s. Rajendra Ispat, but since it is the only basis of addition made by AO, it is submitted that credence could not be given to the statement in the proceedings against the appellant unless and until it is tested under cross-examination. In the absence of the statement being tested, it cannot be said that it should be believed completely to the prejudice of the appellant. Thus, in absence of cross-examination from Shri Abhishek Agrawal, Shri Gitesh Agrawal and Shri Rajendra Chauhan, their statements cannot be relied upon as evidence. The appellant places reliance on the following cases:-

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value of closing stock, including quantity, has also been accepted by the AO. Therefore, although the AO has disputed impugned sales, the effect of such sales in the financial statements has not been disturbed. Such approbate & reprobate is not permissible.

**Additional evidence being filed & request for admission of additional evidence u/r 46A**

The appellant could not submit stock register during the assessment proceedings. The reason for the same being that the appellant had already submitted all other necessary documents such as ledger account of the party, bank statements and relevant bills, one to one correlation between sales and its purchases, agreement with the seller and buyer were already submitted before the AO during the course of assessment, therefore the counsel of the appellant was under a genuine belief that since the transactions have been substantiated, the claim of appellant would be accepted by the AO and no adverse inference would be drawn. Therefore, the appellant was not advised by his earlier counsel to submit the stock register. However, since the AO has not considered the submission of the appellant wherein he had explained how the impugned transactions should not be considered bogus and since the AO made addition, the appellant has now been advised by his new counsel to submit the above documents as additional evidence. The additional evidences therefore, could not be filed before the AO for reasonable cause, which was beyond control of appellant. The case of appellant is thus covered by exception provided in Rule 46A(1)(c). Therefore, **it is humbly requested that this additional evidence may kindly be admitted u/r 46A,** per need of justice

**2.4 Sales offered to tax**

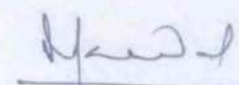
2.4.1 The impugned sales are duly recorded in the sales register/books, with the relevant entries pertaining to M/s. Rajendra Ispat (page no. 38 to 61 of enclosures to this letter). The total sales figure as per the sales register is also reflected in the audited profit & loss account (page 37 no. of enclosures to this letter). Further, the net profit disclosed in the audited profit and loss account including the profit element on the said sales, is duly included in the computation of income. For your reference, we are enclosing herewith a copy of the computation, ITR acknowledgment and audit report for the year under consideration. (page no. 182 to 228 ).

2.4.2 Sales so offered/ credited in books forms part of return of income of appellant and whatever was the profit thereon, same is included in the returned income, which has also been taxed by the AO. Therefore, it stands established that profit on impugned sales has been assessed by the AO.

2.4.3 **Addition amounts to double addition**

Since the sales made to the impugned party has already been included by the appellant in its turnover. It is undisputed that net profit from business receipts has already been brought to tax. **When the profit on such transaction stood taxed, entire receipts of the same transaction could not have been brought to tax,** this action of the AO amounts to double addition, which is not permissible and is liable to be struck

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2.4.5 Statement showing one to one co-relation between goods sold to the impugned party were purchased from the manufacture Mangal Commercial Pvt. Ltd. (page no. 177).

A perusal of the above statement establishes one-to-one co-relation between purchases and impugned sales, demonstrates that the explanation submitted by appellant that goods sold the impugned party was on one-to-one basis purchased from Mangal Commercial, stands established in the sense that against each sales made to the impugned party, there are corresponding purchases, of identical quantity and on the same date or within the same week. The purchases made by appellant have been debited in purchase account, which have not been doubted by the AO. Corresponding sales could not have been, therefore, disputed.

2.4.6 Delivery of goods by Mangal Commercial Pvt. Ltd.

We are enclosing herewith copy of agreement entered between Mangal Commercial Pvt. Ltd., manufacturer of TMT bars and the appellant (page no. 178 to 181). The delivery clause of the said agreement at page no. 180, clearly mentions that the appellant will appoint a consignee (M/s Rajendra Ispat) and the manufacturer will incorporate the place of delivery as the address of the appointed consignee (M/s. Rajendra Ispat).

Since the goods were sold on *bill to ship to* model from Mangal Commercial Pvt. Ltd. to M/s. Rajendra Ispat, the appellant is not in a position to furnish any documentary evidence in support of the transportation of the goods as these documents are part of record of Mangal Commercial P. Ltd. or M/s Rajendra Ispat. Nevertheless, the appellant is still trying to obtain the relevant documents and therefore, it is humbly requested that the appellant may kindly be allowed some time to furnish the same as these are to be obtained from third parties.

2.4.7 We are enclosing herewith GSTR- 1 for the month of February (page no. 17 to 21), where outward supplies of Rs. 7,96,99,723/- have been reported. Therefore, the appellant has disclosed details of sales o from the impugned party.

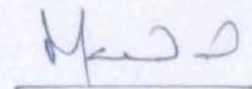
2.4.8 Extracts of sales register placed at page no. 38 to 61.

2.4.9 The **appellant maintains day to day quantitative details of goods**. The material sold was entered in the stock register, extracts whereof is enclosed (page no. 26 to 36), which is **an additional evidence**. The quantitative details have not been disputed by AO and the closing stock as per these quantitative details has been accepted by AO.

2.4.10 Books & stock register not rejected

The quantity sold by appellant has been entered in the quantitative/stock register maintained by the appellant. None of the entries in the stock register have been disputed by the AO. The AO has also not rejected the books of accounts of the appellant which is evident from the fact that income as returned by the appellant has been assessed by the AO. Whatever is the quantity of closing stock as reflected in such stock register, same was valued and included in the financial statements and such

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shifted to some other address, is not in the knowledge of the appellant as it had not entered into any transactions with them in the later years. Therefore, treating the transactions as bogus only due to the fact that the parties are not operating from their then business premises and making addition in the hands of the appellant is not justified.

### 2.3.2 No acceptance of falsehood by anybody

- A perusal of the statements of Shri Rajendra Chauhan, Shri Abhishek Agrawal and Shri Gitesh Agrawal reveals that **in none of the above statements, anybody has accepted being indulged in providing accommodation entries on behalf of M/s. Rajendra Ispat.**
- The very basis of alleging the transaction entered into between the appellant and M/s. Rajendra Ispat as bogus was statement given by its key person.
- However, as per the statement provided to the appellant, Shri Gitesh Agrawal and Shri Abhishek Agrawal have accepted providing accommodation entries from their own proprietorship concerns – M/s. Abhishek Enterprises and M/s. Pratyush sales only. There is absolutely no mention about M/s. Rajendra Ispat being indulged in providing accommodation entries on commission basis.

2.3.3 The only adverse finding against M/s. Rajendra Ispat is recorded in the statement of Shri Abhishek Agrawal, wherein the said party has merely mentioned that some of cash related messages found from his mobile phone pertains to M/s. Rajendra Ispat. However, surfacing of mere cash related transactions in somebody's mobile phone cannot automatically lead the AO to believe that the sales made by the appellant to the impugned party is bogus.

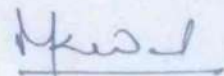
2.3.4 Therefore, the sole basis given by AO for arriving at the conclusion that the transaction between the appellant and M/s. Rajendra Ispat is bogus is incorrect and fails at the threshold itself.

### 2.3 Sale of TMT bar genuine - evidences relating to sale of goods

In support of the sales made to the impugned party, the following documents were submitted before AO: -

- 2.4.1 Sales bills (page no. 113 to 166).
- 2.4.2 Agreement for sales between the appellant and M/s. Rajendra Ispat of material (page no. 167 to 170).
- 2.4.3 Copy of account of the impugned party in the books of appellant (page no. 87 to 92).
- 2.4.4 Extracts of bank statements (page no. 171 to 176), wherein relevant entries are highlighted. The credits in the name of customer may be verified from such bank statements. There is no evidence to show that the money so paid has come back in the hands of appellant.

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**2.1 Incorrect amount added by AO**

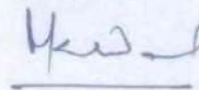
- 1.2.1 At the outset, it is submitted that the amount added by AO as sales to the impugned party is Rs. 5,24,89,337/-. However, the said amount does not represent the sales but the total of credit side of ledger account of the impugned party in the books of the appellant.
- 1.2.2 In support of above, we are enclosing herewith copy of account of the impugned party in the books of appellant (page no. 87 to 92), wherein the amount of sales are clearly reflected at Rs. 5,01,39,337/- (inclusive of GST) and the amount of Rs. 5,24,89,337/- is reflected as the total of credit side, i.e. payments received.
- 1.2.3 The actual amount of sales made to the impugned party (exclusive of GST), which has been considered by the appellant in its turnover is **Rs. 4,24,90,964/-**.
- 1.2.4 Therefore, without prejudice to the submission being made by the appellant *infra* that transactions are genuine, the AO could not have considered the figure inclusive of GST.

**2.2 Comments on material relied upon by the AO****2.3.1 Physical verification report**

- Vide page no. 25 of the assessment order, AO has reproduced relevant portion of physical verification report in case of M/s. Rajendra Ispat. It has been mentioned that no entity was running their business and no board etc. was found at the mentioned address (404, 4<sup>th</sup> floor, Samta Colony, Raipur) . Therefore, it was concluded that the taxpayer was not identified and the genuineness of the transaction made by appellant is not ascertained.
- In this regard, it is submitted that, in the assessment order itself the AO has mentioned that survey u/s 133A was carried out at the premises 404, 4<sup>th</sup> floor, Samta Colony, Raipur and the statements were also recorded at the very premises, as is evident from the statement recorded on oath of Shri Rajendra Chauhan, Shri Abhishek Agrawal and Shri Gitesh Agrawal enclosed herewith (page no. 93 to 112 ).
- The same address is also mentioned in the bills issued to the party. **When a survey action on the very premises has been conducted by the department on 24.01.2019, then how can the VU report that no such entity is running its business in the said premises is beyond apprehension.**
- The VU has concluded that since the above party could not be identified in the given address, the genuineness of the sales made by the appellant is not ascertained.

In this regard, it is submitted that the appellant had entered into transactions with the impugned party only in the year under consideration and during that period the above mentioned party was operating from the above mentioned address as is substantiated by conduct of survey on these premises. Post that if the party has

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1.9 A perusal of the final report provided by the AO shows that it does not implicate the transaction of appellant on the basis of any evidence or material. In the information provided by AO, there is reference of a number of other material. However, such other material was never provided by the AO to the appellant and therefore, addition was made without providing complete material to the appellant. The only material provided was the final report, which does not implicate the transaction of appellant on the basis of any cogent material. The other material not having been provided, same is required to be excluded for the purpose of present adjudication. Therefore, nothing positive remains against the appellant.

1.10 In view of above documentary evidences and explanations, the allegation of bogus purchases is arbitrary, baseless and is therefore liable to be deleted.

As regards ground no. 2

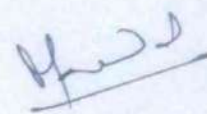
This ground of appeal is against the addition of Rs. 5,24,89,337/- made by AO on account of sales made by appellant to M/s. Rajendra Ispat as unexplained cash credit, invoking section 68.

Observations of AO

- i) A survey u/s 133A was carried out at the office premises of M/s. Rajendra Ispat at 404, 4<sup>th</sup> floor, Santa Colony, Raipur.
- ii) The key person of M/s. Rajendra Ispat, Shri Gitesh Agrawal accepted on oath that they have issued original bill without actual supply of goods. In this process, they received RTGS and later they withdrew the cash and returned cash to the persons from whom RTGS was received.
- iii) The physical verification report from verification unit with regard to M/s. Rajendra Ispat revealed that no entity by the name M/s. Rajendra Ispat is operating from the address provided.
- iv) The statement of Shri Rajendra Chauhan and Shri Abhishek Agrawal further corroborated that they operated for M/s. Rajendra Ispat and other entities in providing bogus transaction.
- v) Further, as per agreement between Shakti Agency Pvt. Ltd. and M/s. Rajendra Ispat, the authorized signatory of M/s. Rajendra Ispat is Shri Gitesh Agrawal. Whereas, the said party in his statement on oath has stated that he is proprietor only in M/s. Abhishek Enterprises and other than this, he is neither director nor proprietor in any company or firm.
- vi) There is no explanation regarding the genuineness of transaction of bogus sales as the appellant neither provided any documentary proof nor substantiated the genuineness of sale to M/s. Rajendra Ispat.
- vii) The appellant has simply provided bank statements, ledger account and invoices but nothing has been submitted regarding the transportation or delivery details of the purchases made.

The AO, heavily relying on the statements of Shri Rajendra Chauhan, Shri Abhishek Agrawal & Shri Gitesh Agrawal, concluded that the sales made by appellant to M/s. Rajendra Ispat is bogus. In this regard, it is submitted that: -

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1.6.3 The material under consideration is titled "*Final Report in the case of M/s Sunil Enterprises*", and the following observations merit attention upon review:

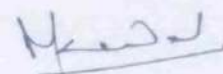
- The report does not clearly indicate the source or direction of information flow - i.e., it remains unclear who communicated the information to whom.
- Upon examining the sales and purchase details pertaining to M/s Sunil Enterprises, **the only adverse observation recorded against the entity is its failure to file the Income Tax Return (ITR) for the relevant assessment year.**
- The authority responsible for issuing the final report has, on multiple occasions, noted the absence of adequate supporting information from the Commercial Taxes Department to substantiate the allegations against the impugned party. Instances include:
  - i) In para 2 of the report, it is stated that due to lack of sufficient information from the Commercial Taxes Department, a letter was addressed to the Commissioner, CT & GST, Odisha. However, no response had been received by the time the final report was issued.
  - ii) Para 4 of the report mentions that a letter dated 03.02.2022 was sent to the Deputy Commissioner, CT & GST, Balasore, requesting documentary evidence in support of the allegations. Again, no reply had been received as of the date of the report's issuance.
  - iii) Lastly, in the concluding paragraph of the report, the issuing authority, relying on information provided by the GST Department, asserts that the impugned party engaged in fictitious transactions i.e., purchases and sales were conducted merely on paper without actual movement of goods. It is on this basis that **the appellant is said to have issued a sales invoice to M/s Sunil Enterprises.**

1.7 The entire basis of allegation that Sunil Enterprises has taken fake purchases appears to be arbitrary & a faulted one.

1.8 **No enquiry by AO**

In support of the transaction, appellant submitted all the legal and cogent evidences required to substantiate that the transactions are genuine. However, once such documents were submitted, and when the allegation was disputed by the appellant, the legal and cogent evidences could not have been discarded by the AO in absence of any enquiry made by the AO. During the assessment proceedings, the AO made addition without making any enquiry whatsoever, which is illegal. Assuming without admitting that information was available with the AO, but when the appellant placed legal and cogent evidences before him, no addition could have resulted only on the basis of information which was available with AO. The AO did not conduct any enquiry even on the basis of details of the buyer given by appellant.

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1.4.1 At the outset, it is submitted that the amount of purchases disallowed by AO as purchases from the impugned party is Rs. 31,24,759/-. The said amount includes the GST element on such purchases of Rs. 4,76,658.15.

1.4.2 The AO has, thus, made an excess addition of Rs. 4,76,658.15, which does not represent the purchases debited by the appellant in its books.

1.4.3 Therefore, without prejudice to the submission being made by the appellant *infra* that transaction is genuine, the AO could not have considered the figure inclusive of GST.

1.5 Notices / Orders of AO

1.5.1 No allegation in show-cause notice u/s 148A(b)

A perusal of show-cause notice issued by the AO, placed at page no. 1 & 2 reveals that **there is absolutely no mention of any allegation of bogus purchases leveled against the appellant prior to re-opening its case.**

1.5.2 Findings rendered in order u/s 148A(d)

Vide order u/s 148A(d), placed at page no. 3 to 5 above, the AO is abruptly in receipt of some information from Investigation Wing regarding alleged bogus purchases made by the appellant from M/s. Sunil Enterprises. Thus, the **order u/s 148A(d) dt. 27.03.2022 has been passed effectively without issuing any show-cause notice to the appellant.**

The only basis given by AO for alleging bogus purchases was investigation report of the Investigation Wing. However, the said report was not provided to the appellant till 20.03.2023.

1.5.3 Allegation in SCN issued during assessment proceedings

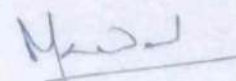
- We are enclosing herewith a copy of SCN dt. 20.03.2023 (page no. 62 to 82), wherein the relevant findings / observations of AO regarding transactions of the appellant with the impugned party starts from page no. 77 & 78.
- A perusal of page no. 82 of the SCN reveals that the underlying material for the allegation of bogus purchases, i.e. the investigation report of the investigation wing was provided to the appellant with such SCN.

1.6 Material on record of AO

1.6.1 We are enclosing herewith a copy material provided to the appellant along with SCN dt. 20.03.2023 for your reference (page no. 83 to 86).

1.6.2 At page no. 84, there is reference of some information received from the GST department, however, **nothing is coming out from the material provided as to what information was provided by the GST department.**

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- v) Chinar Gems vs ITO in ITA no. 1439, 1440/Mum/2025 dated 14.08.2025.
- vi) Pr. CIT vs Keshri Export in R/ Tax Appeal No. 743 & 744 of 2024 dt. 04.09.2024 of Hon'ble Gujarat High Court.

**Additional evidence being filed & request for admission of additional evidence u/r 46A**

Some of the documents submitted above are additional evidences and could not be submitted before the AO. Such additional documents include transportation receipts / bulity and billets stock register. The reason being that the appellant had already submitted all other necessary documents such as copy of account of the impugned party, purchase invoices, extracts of bank statements, agreement of purchase, GSTR-1 and audit report before the AO during the course of assessment therefore the counsel of the appellant was under genuine belief that since the transactions have been substantiated, the claim of appellant would be accepted by the AO and no adverse inference would be drawn. As regards the reason for non-submission of transportation receipts before AO, it is submitted that since the goods were sold directly by M/s. Sunil Enterprises to M/s. Indian Steel & Infrastructure Pvt. Ltd, the appellant was not in receipt of the transport related documents and therefore the same could not be submitted. However, since the AO has not considered the submission of the appellant wherein he had explained how the impugned transactions should not be considered bogus and has made addition, the appellant has now been advised by his new counsel to submit the above documents as additional evidence. The additional evidences therefore, could not be filed before the AO for reasonable cause, which was beyond control of appellant. The case of appellant is thus covered by exception provided in Rule 46A(1)(c). Therefore, it is humbly requested that these additional evidences may kindly be admitted u/r 46A, per need of justice.

**1.3 No information on record of AO against appellant**

A perusal of the information on record of AO, which was utilized to reopen the case of appellant, shows that all that the AO had on his record was, information that M/s Sunil Enterprises was making bogus purchases. There is absolutely no adverse material on record so far as the sales of M/s Sunil Enterprises are concerned. In the case of appellant, it is the sale transaction of M/s Sunil Enterprises which are relevant as the appellant was buyer.

Without prejudice to above, even if there was any material before the AO suggesting that Sunil Enterprises had taken fake purchases, this *ipso facto* could not lead to even an inference that the subsequent sales made by the impugned party would also be in-genuine. Assuming without admitting, for a moment, that allegation of AO is correct (that Sunil Enterprises booked bogus purchases from parties mentioned in the final report), it could be a case that Sunil Enterprises might have made purchases but the bills that it might have used to record such purchases might be of in-genuine parties. In that case, purchase transaction could not be said to be in-genuine (in the case of Sunil Enterprises) and only the party from whom Sunil Enterprises made purchases might be in-genuine. Assuming that any such sales were made by Sunil Enterprises out of such purchases made/recorded by it, no case could have been made out of in-genuine sales in its hands and consequently no adverse view could have been taken in the case of appellant purchaser.

**1.4 Amount inclusive of GST considered by AO**

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26 to 36), which is an additional evidence. The quantitative details have not been disputed by AO and the closing stock as per these quantitative details has been accepted by AO.

1.2 **Sale of impugned goods accepted by AO**

It is submitted that impugned goods purchased by appellant were sold directly to M/s Indian Steel & Infrastructure P. Ltd. In the purchase bills itself, name of consignee is mentioned.

1.2.1 **The AO has not disputed the sales made by appellant.** As per the one to one correlation between purchases and sales submitted at page no.16. above, the goods purchases from the impugned party were **ultimately sold to M/s. Indian Steel & Infrastructure Pvt. Ltd.** The said fact is also verifiable from the copy of purchase bills issued by M/s. Sunil Enterprises, placed at page no. 6 to 9. The following details emerge from there: -

Seller : M/s. Sunil Enterprises  
Buyer : Shakti Mines & Mineral (A unit of Shakti Agencies Pvt. Ltd.)  
Consignee : M/s. Indian Steel & Infrastructure Pvt. Ltd.

1.2.2 The sales out of impugned purchases forms part of the sales credited to profit & loss account. Copy of stock register already placed at page no 26 to 36 above, additionally we are enclosing herewith audited profit and loss account (page no. 37) and sales register (page no. 38 to 61), from which it is verifiable that **sales of the impugned purchases are accounted in books, credited to sales account and it forms part of sales reflected in the audited accounts, on the basis of which return of income was filed, disclosing the profit earned thereon.**

The profit earned of such sales forms part of returned income, which has also been assessed by the AO.

1.2.3 **Once the sales of impugned goods were accepted by the AO, related purchases could not have been doubted** and no adverse inference could have been drawn. For this proposition, appellant places reliance on the following cases:-

i) CIT vs Simit P. Sheth (2013) 356 ITR 451 (Guj.)

**High Court** observed that **once sale of the quantity is accepted, the purchases of the same quantity have to be believed.**

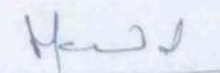
ii) ACIT vs M/s Steel Line (India) (2017) 50 CCH 306 (Mum. Trib.)

Hon'ble ITAT held that when sales were not doubted, quantitative details of purchases and sales are available, AO could not have added entire purchases.

iii) M/s Fancy Wear vs ITO (2017) 167 ITD 621 (Bom.)

iv) Pr. CIT vs Rishabhdev Tachnocable Ltd. (2020) 107 CCH 489 (Bom. HC).

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- iii) Vide page no. 19 of the assessment order, AO has mentioned that it is clear as per the information passed by GST department that the appellant has taken bills without actual supply of goods and has inflated its expenses to suppress its total income.
- iv) Vide page no. 20 of the assessment order, AO has mentioned that notice u/s 133(6) was issued to M/s. Sunil Enterprises, which remained un-complied. Physical verification carried out in the case of above assessee revealed that the said place is identified as a residential house.
- v) The AO has also mentioned about some investigation report from Investigation Wing revealing M/s. Sunil Enterprises as a bogus entity.

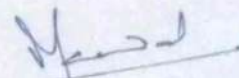
Therefore the AO concluded that entire purchases from M/s. Sunil Enterprises as shown by the appellant in its books should be disallowed and added back as business income u/s. 37. In this regard, it is submitted that: -

1.1 Purchases genuine – documents in support of transactions.

In support of the purchase transactions from the impugned party, the following documents were submitted before AO, which are enclosed herewith for your reference: -

- i) Purchase bills (page no. 6 to 9).
- ii) Agreement for purchase of material between M/s. Sunil Enterprises appellant (page no. 10 to 13).
- iii) Copy of account of the impugned party in the books of appellant (page no.14).
- iv) Extracts of bank statements (page no. 15), wherein relevant entries of payments are highlighted. The debits in the name of supplier may be verified from such bank statements. There is no evidence to show that the money so paid has come back in the hands of appellant.
- v) Statement showing one to one co-relation between goods purchased from the impugned party with goods subsequently sold to Indian Steel & Infrastructure Pvt. Ltd. (page no. 16).
- vi) We are enclosing herewith GSTR- 1 for the month of February (page no. 17 to 21), , where outward supplies of Rs. 7,96,99,723/- (which includes sales out of impugned purchases) have been reported. Therefore, the appellant has disclosed details of sales of billets purchased from the impugned party.
- vii) Transportation receipts / builtly (page no. 22 & 23), which is additional evidence. These evidences establish movement of goods.
- viii) Extracts of purchase register (page no. 24 & 25).
- ix) The appellant maintains day to day quantitative details of goods. The material purchased was entered in the stock register, extracts whereof is enclosed (page no.

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Re: PAN: AAFCS 5530 F  
A.Y.: 2018-19  
Sub: Appeal no.: NFAC/2017-18/10244772

As regards ground no. 1

This ground of appeal is against disallowance of Rs. 31,24,759/- on account of alleged bogus purchases from M/s. Sunil Enterprises made by AO invoking sec. 37.

In the case of appellant, show-cause notice u/s 148A(b) was issued on 09.03.2022, copy enclosed (page no. 1 & 2), alleging escapement of income to the extent of Rs. 5,01,39,337/- on account of bogus sales made to M/s. Rajendra Ispat. It is pertinent to note that, **there was no mention of the addition made on account of alleged bogus purchases from M/s. Sunil Enterprises in the said show-cause notice.**

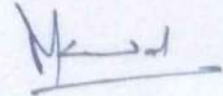
Thereafter, order u/s 148A(d) (page no. 3 to 5) was passed on 27.03.2022 alleging that the appellant had indulged in both bogus purchases and sales amounting to Rs. 26,48,100/- (from M/s. Sunil Enterprises) and Rs. 5,01,39,337/- (to M/s. Rajendra Ispat) respectively.

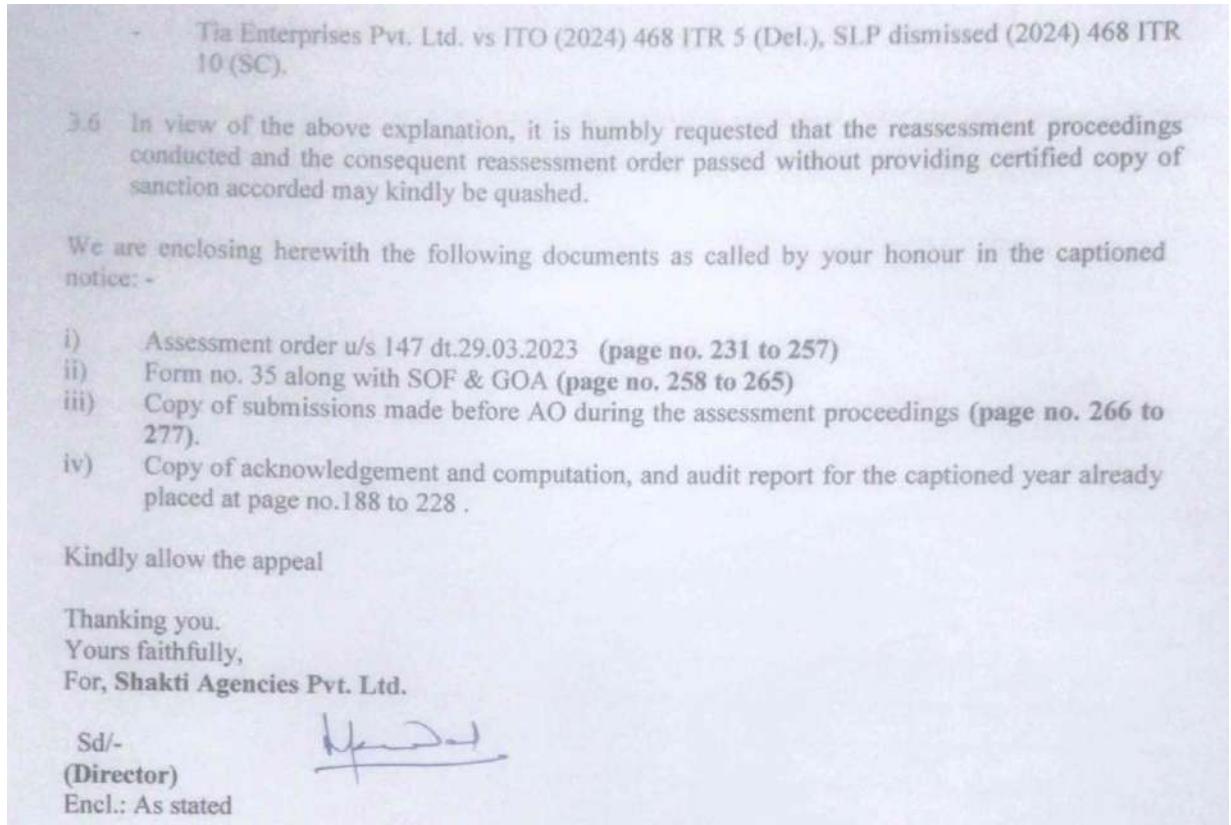
In response to notice u/s 148 dt. 27.03.2022, the appellant had filed return on 16.04.2022.

Observations of AO

- i) AO had received information from Investigation Wing that the appellant had indulged in bogus purchase to the tune of Rs. 26,48,100/- with M/s Sunil Enterprises.
- ii) The enquiry conducted by investigation wing revealed that **the purchases made by M/s. Sunil Enterprises are bogus** as evident from the information received from GST department. The only information mentioned by AO in the assessment order as received from GST department is that – *it is seen from the records that the assessee (M/s. Sunil Enterprises) has not filed its ITR for AY 2018-19 and therefore has clearly suppressed the turnover of Rs. 4,24,22,798/-.*

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8. The Ld. Counsel has also filed a brief synopsis which is as under:

Evidences submitted

- i) Purchase bills (PN 80 to 83 of PB).
- ii) Agreement for purchase of material between M/s Sunil Enterprises and assessee (PN 84 to 87 of PB).
- iii) Copy of account of M/s Sunil Enterprises (PN 79 of PB).
- iv) Extracts of bank statement depicting entries of payments made to the party (PN 88 of PB). Debits in the name of supplier appearing.
- v) Details of one-to-one correlation between goods purchased from the said party and subsequent sale of the same goods to M/s Indian Steel & Infrastructure P. Ltd. (PN 91 of PB).
- vi) GSTR-1 of February reflecting outward supplies of Rs. 7,96,99,723/- (which includes sales out of the impugned purchases) (PN 92 to 96 of PB).
- vii) Transportation receipts/builties (PN 89 & 90 of PB).
- viii) Extracts of purchase register (PN 97 & 98 of PB).
- ix) Day to day stock register (PN 99 to 109 of PB).

Sale of impugned goods recorded & accepted

- i) There is **one-to-one correlation between impugned purchases and sale** of the same goods. Details at PN 91 of PB. Goods directly sold to M/s Indian Steel & Infrastructure P. Ltd. In all the purchase bills (PN 80-83 of PB), name of assessee is appearing as buyer while name M/s Indian Steel & Infrastructure P. Ltd. is appearing as consignee.
- ii) Sales made out of the impugned purchases not disputed by AO. Sales so made credited to profit and loss account.
- iii) Once sales of impugned goods accepted by AO, related purchase could not have been doubted. Reliance on: -
  - a) CIT vs Simit P. Sheth (2013) 356 ITR 451 (Guj.), PN 254 to 258 of PB, relevant finding at PN 257, para no. 6 & 7.

- Synopsis
- b) Pr. CIT vs Rishabhdev Technocable Ltd. (2020) 107 CCH 489 (Bom. HC), relevant finding at para 15 and 18.
  - c) Pr. CIT vs Keshri Export in R/Tax Appeal no. 743 & 744 of 2024 dt. 04.09.2024 of Hon'ble Gujarat High Court, relevant finding in para 5 & 6.
  - d) M/s Fancy Wear vs ITO (2017) 167 ITD 621 (Bom.)

**Material on record of AO**

- i) It was regarding purchases made by Sunil Enterprises and not sales made by it. Assessee had purchased from this party and in this sense, there was no adverse material on record.
- ii) With SCN dated 20.03.2023, AO provided material relied upon for reopening (PN 155-158 of PB). Reference of information received from GST Department is at PN 156 of PB.
  - Nothing coming out from the material as to what information was provided by GST Department. It is not forthcoming as to who communicated the information to whom.
  - Only adverse observation is its failure to file income tax return for the relevant year. This cannot lead to inference of transaction being bogus.

This information was not sufficient to reopen the case.

- iii) Entire basis of allegation that supplier took fake purchase bills appears to be arbitrary and a faulted one.

**No enquiry by AO**

- i) Assessee submitted all legal and cogent evidences which could not have been discarded in absence of any enquiry made by AO.
- ii) Assuming without admitting that there was any information available with AO, no addition could have resulted only on the basis of such information, in absence of any enquiry made by AO either from the supplier or from the consignee.

Perusal of final report (PN 156-158 of PB) provided by AO shows that it does not implicate transaction of assessee on the basis of any evidence or material. No basis has been given and no underlying material has been brought on record. In the information provided, there is reference of number of other materials but such other material was never provided to assessee.

**Ground no. 2**

**Evidences submitted**

- i) Sale bills (PN 165 to 218 of PB).
- ii) Agreement for sales between assessee and M/s Rajendra Ispat (PN 219 to 222 of PB).

- iii) Extracts of bank statements showing credits in the name of customer (PN 223 to 228 of PB).
- iv) Statement showing one-to-one correlation between goods sold to the said party and purchases made from M/s Mangal Commercial P. Ltd. (PN 233 of PB)
- v) Sales made to Rajendra Ispat also recorded in sales register (PN 110 to 133 of PB, relevant entries on PN 114 & 115)

**No adverse statement by anyone, against assessee**

- i) AO has relied upon the statement of the Rajendra Chauhan, Abhishek Agrawal and Gitesh Agrawal, which are placed at PN 234 to 253 of PB.
- ii) None of the deponents have deposed anything specific against the assessee and therefore, assessee's transaction has not been implicated. As such, there is no evidence against assessee.
- iii) There was no adverse statement in respect of sales made by assessee and no specific adverse statement about assessee.
- iv) Vide letter dated 15.03.2023 (reproduced in SCN, on page 145-146 of PB), AO was informed that: -
  - a) Abhishek Agrawal and Gitesh Agrawal admitted having **issued sale bills** without supply of goods and **they did not admit any bogus purchases having been made**. It was explained that M/s Rajendra Ispat made purchases from assessee and therefore material relied upon was not relevant (PN 145 of PB, last 2 para).
  - b) PN 146 of PB, 1<sup>st</sup> para - submitted that text message found in the mobile of Abhishek Agrawal does not include name of assessee and the transaction was of sale of material by assessee to M/s Rajendra Ispat. Proceedings were initiated on the basis of wrong information.

**Sale of impugned goods recorded & accepted**

- i) There is **one-to-one correlation between impugned sales and purchase** of the same goods. Details at PN 233 of PB. Goods directly sold to M/s Rajendra Ispat by assessee's supplier Mangal Commercial P. Ltd.
- ii) The purchases, out of which impugned sales were made, are not disputed by the AO.
- iii) When one part of the transaction has been accepted (purchases), the second part of the same transaction (sales) could not have been doubted by the AO. Reliance on case laws mentioned in sr. no. 2(iii) of this synopsis in respect of ground no. 1 above.

**4. Direct delivery of goods by Mangal Commercial P. Ltd. (supplier of assessee)**

- i) Agreement of assessee with supplier Mangal Commercial P. Ltd. (PN 229-232 of PB), delivery clause (PN 231 of PB) provides that assessee shall appoint a consignee and the

manufacturer i.e. Mangal Commercial will deliver the goods directly to consignee raising a bill on the assessee.

- ii) Goods sold on direct sales basis i.e. *bill to ship to model*.

#### Sales offered to tax; double taxation

- i) Sales made to Rajendra Ispat also recorded in sales register (PN 110 to 133 of PB, relevant entries on PN 114 & 115). Total sales of item as per sales register Rs 11,12,85,445/- (PN 125 of PB) is reflected in the audited profit and loss account (PN 61 of PB). Profit on the impugned sales included in returned income and assessed also by the AO.

#### ii) Addition amounts to double taxation

To tax entire sales receipts of the same transaction amounts to double taxation, not permissible. Reliance on: –

- a) Anantpur Kalpana vs ITO (2022) 194 ITD 702 (Bang.), PN 259 to 264 of PB, relevant findings at PN 264, para 9.
- b) DCIT vs M. C. Hospital (2022) 197 ITD 706 (Chennai), PN 265 to 274 of PB, relevant findings at PN 273, para 9.6.
- c) ACIT vs Vishal Exports Overseas Ltd. in ITA No. 2471 of 2009 dated 03.07.2012 of Hon'ble Gujarat High Court, relevant finding at para 5 and 6.
- d) ITO vs Parmanand Gupta in ITA No. 82/RPR/2017 dated 04.08.2022, page 38 para 21 of order.

#### Books not rejected

AO has neither rejected books of accounts nor the day to day quantitative register maintained. Whatever is the quantity of closing stock as reflected in stock register, same has been accepted by the AO. Such closing stock is after accounting for the impugned sales.

#### Material on record not provided

- i) Notice u/s 148A(b) is at PN 72-73 of PB. It only refers to some information on record. **What is such information, it was never shared.** From the notice, nothing is coming out as to what is the basis of and how the transaction has been alleged to be bogus. Relevant material not having been provided, initiation of reassessment itself is illegal.
- ii) In the order u/s 148A(d) (PN 74-76 of PB), the **information on record has neither been reproduced nor discussed as to how the conclusion of the relevant sales being allegedly bogus was drawn.** Order does not contain any details how such conclusion was arrived at.

- iii) Subsequent to reopening, request made to the AO (on 28.01.2023, PN 78 of PB) to provide the material/information as also the standard form used to get approval of higher authority u/s 151 but partial information provided as late as on 14.03.2023 and assessment order was passed on 29.03.2023.
- iv) Vide letter dated 23.02.2023 (reproduced in SCN, on page 138-139 of PB), AO was informed that information/material on record was not made available (PN 138, para no. 2 & 4).
- v) Vide letter dated 15.03.2023 (reproduced in SCN, on page 139-140 of PB), information received from Investigation Wing, from INSIGHT portal, from Central Circle, Raipur etc. and approval of higher authority again requested (PN 141 of PB).
- vi) Reliance on Smt. Vasanthi Ramdas Pai vs ITO (2024) 159 taxmann.com 392 (Karn.).
8. **No enquiry by AO**
- i) Assessee submitted all legal and cogent evidences which could not have been discarded in absence of any enquiry made by AO.
- ii) Assuming without admitting that there was any information available with AO, no addition could have resulted only on the basis of such information. AO did not conduct any enquiry either from the supplier or from the buyer.
9. **Regarding physical verification report**
- Transaction was undertaken in FY 2017/18 and concerned party was found at the same premises on 24.01.2019 when survey was conducted. If subsequently the party moves to some other place, genuineness cannot be discarded.
11. **Sec. 68 not applicable**
- Sec. 68 applies only where an assessee does not offer the amount received as income. In the case of assessee, amount received from M/s Rajendra Ispat was against sales and it was already offered to tax.
- DCIT vs Varsity Education Management P. Ltd. in ITA no. 6991/Mum/2016 order dt. 24.10.2018 (2018) 54 CCH 156 (Mum.), relevant finding in para 35 thereof.
12. **No cross examination allowed**
- Request was made for cross examination vide para 4 of letter dated 23.02.2023 (reproduced on PN 138, para no. 4). In absence of cross examination of either of the deponents, their statements could not have been relied upon by the. Reliance on: -
- i) Andaman Timber Industries vs Commissioner of Central Excise (2015) 281 CTR 241 (SC).
- ii) SKM Animal Feeds & Foods (India) Pvt. Ltd. vs ACIT (2024) 464 ITR 213 (Mad.), relevant finding at para 16.

(ii) Prarthana Construction (P.) Ltd V. DCIT [2001] 118 Taxman 112 (Ahd.); (2001) 70 TTJ 122 (Ahd.); (1999) 18 CCH 319 (Ahd.), relevant findings in para no. 16.

(vi) ITO vs Rahul Kathuria in ITA No. 151-152/RPR/2025 dated 26.11.2025.

Ground no. 3

Vide letter dated 28.01.2023 (PN 78 of PB) request was made for providing copy of approval. Thereafter, vide para 4 & 5 of letter dated 23.02.2023 (reproduced in SCN dated 20.03.2023, relevant explanation at PN 138 of PB), again requested for providing copy of approval u/s 151. Request also repeated vide para 6 of this letter (PN 139 of PB).

CBDT guideline dated 01.08.2022 para 2.2 mandates that approval u/s 151 is necessarily required to be sent with notice u/s 148.

Approval not provided, consequent reassessment becomes invalid. Reliance on:-

- i) Tia Enterprises P. Ltd vs ITO (2024) 468 ITR 5 (Del.), SLP dismissed vide (2024) 468 ITR 10 (SC), PN 290 to 293 of PB, relevant finding at PN 292, para no. 13.
- ii) Saraswati Garewal vs ITO, ITA No. 166/RPR/2022 dated 25.10.2023, PN 279 to 289 of PB, relevant finding at PN 288, para no. 10, 12<sup>th</sup> line onwards.
- iii) ACIT vs Bharti Axa Life Insurance Co. Ltd. (2021) 189 ITR 450 (Mum.), relevant finding at para no. 4.9.2.
- iv) ITO vs IDM Agro Bio Tech Ltd. (2017) 51 CCH 525 (Mum.) in ITA No. 5805/Mum./2017 dated 04.12.2017, relevant finding at para 22 & 27.

9. In addition to the above synopsis, the Ld. Counsel submitted that the purchases were made one to one basis and he relied on page number 91 of the paper book and stated that the total purchase made of Rs. 26,48,100/- excluding GST was sold to Indian Steel and Infrastructure Pvt. Ltd. for sum of Rs. 26,52,174/- excluding GST and the entire quantity was sold. The revenue authorities have not disputed to the sales made, only they have doubted on the purchase made from M/s Sunil