

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
&  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA Nos:- 1807, 1808, 1809/Del/2014  
(Assessment Years: 2006-07, 2007-08 & 2008-09)**

Dy. Commissioner of Income Tax, Cir.14(1), New Delhi.	Vs.	M/s Padmini VNA Mechatronics Pvt. Ltd., 5,Padmini Enclave, Hauz Khas, New Delhi-110016. <b>PAN No:</b> AACCV1001F
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Revenue by** : Sh. S.R. Senpati, Sr.DR  
**Assessee by** : Sh. Rajkumar Gupta, CA &  
Sh. Sumit Goel, CA

**Date of Hearing** : 19.07.2018.  
**Date of Pronouncement** : 01/08/2018.

**ORDER**

**PER: BHAVNESH SAINI, JM**

All the appeals by Revenue are directed against different orders of Ld. CIT (Appeals)-XXIV, New Delhi dated 04.12.2013 for A.Y. 2006-07 and 2007-08 and dated 06.12.2013 for A.Y. 2008-09.

2. We have heard the Ld. Representatives of both the parties and perused the material available on record.

3. It is stated that in all the appeals, Revenue challenged deletion of addition on account of bogus purchases. It is also stated that issue is same in all the appeals. Both the parties mainly argued in assessment year 2006-07 and have stated that order in A. Y. 2006-07 may be followed in other appeals.

4. For the purpose of disposal of all the appeals, we proceed to decide the departmental appeal for A. Y. 2006-07 as under:-

**ITA No.1807/Del/2014 ( A. Y. 2006-07)**

5. In departmental appeal, the revenue challenged deletion of addition of Rs.1,39,41,577/- on account of bogus purchases.

6. Briefly the facts of the case are that the assessee company filed return of income on 10.11.2006 showing total income of Rs.3,50,39,621/- under the head business and house property which was processed u/s 143 (1). Subsequently reassessment proceedings were initiated u/s. 147 of the IT Act. The assessee in response to the notice u/s 148 submitted before the Assessing Officer that the return of income filed originally be treated as return filed in response to notice u/s 148 of the IT Act. The assessee is in the business of manufacturer of various types of auto electric parts for vehicles. The Assessing Officer in the reasons for reopening of assessment mentioned that survey us/. 133 A of the IT Act was conducted at the premises of M/s. Vinod

Parashar & Associates, Faridabad on 19.09.2007. From the documents impounded during the course of survey, it was noticed that Sh. Vinod Parashar was engaged in the business of providing bogus bills to various parties in lieu of commission. Sh. Vinod Parashar admitted that he had opened various bank accounts in the name of various bogus concerns and through these bogus concerns, he used to issue bogus sale bills against the cheques which were deposited in the bank accounts. Sh. Vinod Parashar used to withdraw cash and returned the same to the beneficiary after deducting his commission. ADIT (Investigation) Faridabad vide letter dated 14.01.2008 intimated that one such beneficiary was assessee company who have obtained bogus bills of purchases. It was also intimated that a perusal of copy of the accounts of the assessee company in the books of M/s Om Industrial Corporation (one of concern of Sh. Vinod Prashar) for financial year 2005-06 revealed that during this year assessee company has obtained bogus purchases bills, accounting to Rs.1,22,54,000/-.

7. During course of the proceedings, notices u/s 133 (6) were issued to concern parties i.e. M/s. Om Industrial Corporation and other parties including M/s. Techno Enterprises by speed post dated 29.08.2011 which were received back unserved with the remarks "left without address". The inspector of the department also reported that these parties were not available at the given address at the time of making local enquiries. The Assessing Officer asked the assessee to prove genuineness of the purchases from these two parties. The assessee filed various replies before Assessing Officer on different dates alongwith the documentary evidences i.e. copy of ledger accounts, copy of bills/invoices, D-3 forms, bank accounts showing payment for

purchases made, copy of stock register, cash book etc. in support of its claim that the purchases have actually been made and have been received at their business premises, accounted for in the stock and used in production and subsequent sale thereof.

8. The AO reproduced some extracts from the assessee's submission in the Assessment Year in which the assessee explained that Assessee Company has no concern/ relation with Mr. Vinod Parashar as stated in the reasons. The Assessee Company has genuine business transaction with M/s Om Industrial Corporation and Vikas Enterprises not as a beneficiary. Actual purchases have been made from M/s Om Industrial Corporation and Vikas Enterprises and genuine purchases bills have been received against supply of material. Neither the assessee company nor the Directors or family member of directors company have received back any payment directly or indirectly in any form from M/s Om Industrial Corporation as stated in the reasons. During the year under appeal, the assessee company purchased raw material component from both the concerns and same purchased material was used in the production process. The details of production process were also explained. It is stated that whenever the material is purchased within the state of Haryana by the assessee company from any party, Form No- D3 of sales tax/VAT is required to be used by the vendor company. The detail of bills and material is entered into the Gate Entry Register where gate keeper puts the stamp of the company of the back side of the bills as a proof of receipt of material. The Gate Keeper after entering the details in the Gate Entry Register sends the material to the stores department where receipt of quantity of the material and other details are recorded in the store register and then material is

issued to the production department as per the requirement. The assessee has been regularly filing his sales tax return where entire purchases so made have been shown. The purchases are made through banking channel and payments are received from the customers after 90-120 days from the date of sale. There is no heavy deposit of the cash and withdrawal of the cash by any party, thus, the assessee made genuine purchases from the above party and assessee is not involved in any bogus transaction. The GP and NP Rate is almost same and is best in the industry. If the purchases are excluded, then the profit would be more abnormal and out of the norms of the industry, which is not permissible. The assessee later on has developed alternate source of supply and some cheaper substitute of material was used through which cost has reduced as compared to earlier years. All the records of the purchases are maintained, no opportunity of cross- examination to Sh. Vinod Parashar have been given to the assessee. The summons were issued to Sh. Vinod Parashar whose statement was recorded during the course of survey for cross-examination on behalf of the assessee but he did not turn up for cross-examination on behalf of the assessee, therefore, his statement cannot be read in evidence.

9. The AO was however not satisfied with the explanation of the assessee and noted in the Assessment Order the following undisputed facts:-

- " (i) *The statement of Sh. Vinod Parashar recorded on 28.12.2007 was recorded by Sh./Ms. Shashi Saklani, ADIT (Inv.-I)-Faridabad which is recorded on oath and it has got a substantial evidentiary value in the eyes of law.*
- (ii) *Sh. Vinod Parashar has categorically stated that he has issued bogus invoices to the assessee and not the actual sale of material.*

- (iii) *Sh. Vinod Parashar has categorically stated that he has returned cash after receiving the payment through cheques; of so-called sales made by him to the assessee.*
- (iv) *All the two parties are not available at the moment as is apparent from the return of letters sent by post as well as from the report of Inspector.*
- (v) *The bank accounts of Sh. Vinod Parashar/Om Industrial Corporation/Techno Enterprises show withdrawal of cash immediately on receipt of payment through cheques either on the same day or on the next day which show that cash was withdrawn to return the money to the payer i.e., so called purchasers.*

*Letters written to various authorities such as, police, postal, excise, sales tax, banks etc. to elicit the details of Parties involved have not resulted into receipt of any conclusive information about the genuineness of such parties.*

10. The AO accordingly treated the purchases made by the assessee from above parties as bogus and made addition of Rs. 13941577/-.

10.1 The assessee challenged the above addition before Ld. CIT(A). The written submission of the assessee reproduced in the Appellate Order in which the assessee has explained that purchase from M/s Om Industrial Corporation was made of Rs. 68,09,000/- therefore addition is excessive to the extent of Rs. 54,45,000/-. The statement of Sh. Vinod Parashar on oath was recorded during survey u/s 133A, which is not admissible against the assessee. The assessee relied upon the decision of **Supreme Court in the case of CIT vs. S. Khadar Khan Son 79 DTR 184 (SC)** and decision of **Kerala High Court in the case of Paul Mathews and Sons 263 ITR 101 (Kerala HC)**. It was further submitted that the statement of Sh. Vinod Parashar was not subjected to cross-examination on behalf of the assessee; therefore, it cannot be read in evidence against the assessee. The assessee relied upon the

decision of the **Supreme Court in the case of Kishinchand Chellaram vs. CIT 125 ITR 713 (SC)**. Assessee submitted that explanation of the assessee was supported by documentary evidences which have not been verified by the AO. The transaction was conducted through banking channel. Report of the Postal Department and Inspector, that the above Parties have left the said premises would show that they existed at the address given by the assessee. Such reports were never confronted to assessee. Therefore, same cannot be read in evidence against the assessee. The notices u/s 133(6) and local inquiries were conducted after 3 to 5 years from the year of purchases. It is not necessary that the said party should continue its business and at the same place for endless period. Therefore, no adverse inference should be drawn against the assessee. All purchases are evidenced by proper purchase bill and VAT, statutory Form-D-3, the purchases are supported by Gate Entry Register, production register, stock register and details furnished to the sales tax and excise authorities. The raw material is consumed in production which is not disputed. There is no evidence available on record, if the assessee received back the cash amount from the seller party. The assessee relied upon the following decisions:-

**(1) Eland International (P) Ltd. vs. DCIT (2009) 26 DTR 113 (Del.)**, in which Delhi High Court held as under:-

***"Held that - It is clear that the transactions of purchase and sale were recorded in the books of account and these transactions led to profit to the assessee, which was brought to tax. If sales have been effected out of purchases made from these parties then, it cannot be said that the purchases were bogus. The finding of bogus sale can only lead to the inference that the corresponding amount should be deleted from the turnover of the assessee. The AO has also not rejected the books of***

***account to estimate profit on the transactions in case it was a firm finding that purchases and sales were bogus. Therefore, on the facts of case and in absence of displacing the finding of the CIT (A) and the fact that the assessee showed profit from these transactions there is no such error in the order of the CIT (A) which requires correction."***

**(2) DCIT vs. Adinath Industries 252 ITR 476 (Guj.)** in which Gujarat High

Court held as under:-

***An information supplied by an agency of the department cannot be held as clinching evidence without independent inquiry and corroboration. Information may be useful for further investigations or corroboration but on its own, it f / cannot be held as clinching evidence. Quantities of purchases and sales and value of sales has been accepted by AO, thus to this extent nothing adverse has been found in the books of accounts. All the purchases are through account payees cheques, Purchases are supported by form ST-38 issued by Excise and Trade department. Nothing adverse has been found in this behalf. In the absence of any allegation about insufficiency of trading results such addition has been rightly deleted by CIT (A)."***

**(3) CIT vs. Leaders Valves (P) Ltd. 285 ITR 435 ( P & H),** in which Punjab &

Haryana High Court held as under:-

***"Tribunal having upheld the conclusion of the CIT (A) that the purchases made by the assessee from seven scrap dealers could not be treated as bogus as the consumption stood fully proved and the trading results of the assessee have been accepted all along and the purchases from these very parties have been accepted by the Department to a large extent in the subsequent assessment year, the finding of the Tribunal is a finding of fact and no question of law arises."***

The assessee therefore prayed that purchases are genuine, hence additions should be deleted.



11. The Ld. CIT(A) considering the findings of the AO in the light of the material on record and submissions of the assessee, deleted the entire addition. His findings in para 5.3 of the appellate order are reproduced as under:-

*"5.3. I have carefully considered the submissions made by the appellant and have gone through the assessment order. The appellant has taken legal contentions as well as based on merits. First of all I deal with the contentions based on merits. As per the reasons recorded, purchases from OIC are of Rs 1,22,54,000/-. In the Asstt. Order also the AO has made addition for purchases from OIC at Rs.1,22,54,000/-. I have seen the copy of ledger a/c. of OIC in the books of assessee as filed before AO also. As per appellant the purchases from OIC are only Rs. 68,09,000/-. This fact is verifiable from the copy of ledger a/c. of OIC in the books of assessee. Hence, at the outset, I am constrained to hold that the purchases from OIC are only Rs. 68,09,000/-. For this reason, the addition of Rs. 54,45,000/- stands deleted as being purchases to this extent not made from OIC.*

*However, purchases of Rs. 54,45,000/- has been made from M/s. Vikas Entpp. It has not been disputed by the appellant that this firm does not belong to Sh. Vinod Parashar. Although, the AO in the Asstt. Order has not made any specific addition for purchases made from Vikas Entpp., but from the replies filed to the AO during Asstt. Proceedings, the copies of which has also been filed before me, it is apparent that the appellant has explained purchases of Rs. 54,45,000/- made from Vikas Enterprises in the practically similar manner as he explained in the case of OIC. The AO has added Rs. 54,45,000/- also by treating as purchases from OIC against correctly from Vikas Entpp. Since, both the firms are related to Vinod Parashar, therefore, under the facts, purchases to extent of Rs. 54,45,000/- are taken as disallowed by the AO for the purchases made from Vikas Entpp. are against OIC as done by the AO. Thus, the Asstt. Order, to this extent stands corrected.*

*Now, I proceed to examine the claim of genuineness of these purchases w.r.t. the documents and the evidences produced before AO as well as before me and also*

*w.r.t. the reasoning's given by the AO, on merits, for not allowing these purchases. The crux of the reasoning of the AO has been given on Pg. 5 of the Asstt. Order which has also been abstracted above by me. In substance, the AO has strongly relied upon the statement of Sh. Vinod Parashar recorded on oath u/s. 131 during the survey proceedings u/s. 133 A. The AO has also given weightage to the fact that these parties were not available at the time of framing the Asstt., since, the letters sent to them u/s. 133 (6) returned back un-served with the remarks "left without address". The AO has also made a reference to the report of Inspector mentioning that the parties were not available at the given address and the local enquiries revealed that these concerns have been closed down quite long back and their present whereabouts are not known. The AO has also made a reference to the bank accounts of these concerns showing cash withdrawal for returning the money to the beneficiaries. In view of these broad findings, the AO reached to the inclusion that the purchases made from these parties are not genuine. The AO, however, could not point out any discrepancy in the documents and records, including stock register produced before him. In this case, I find that all the purchases are evidences by purchase invoices. All the 3 parties are registered with VAT and having TIN nos. as mentioned in the invoices. All the 3 parties are at Faridabad / Haryana. The purchases are made by the appellant at it's Gurgaon factory. For every sale from Faridabad / Haryana to Gurgaon, the seller party has to obtain advance D-3 Vat Form from Faridabad VAT Deptt. This form is to be accompanied with the purchase invoice during transportation of goods from the seller to the buyer. The purchase invoice, D-3 VAT form and the physical goods transported are inter - sea matched by the Vat Deptt. at the border. The VAT Deptt. after verification, put it's seal on the D-3 form. In this case, for all the 3 parties all such documents have been produced by the appellant. It un-doubtedly shows the movement of goods from Haryana to Gurgaon. On receipt of goods, it receipt is entered in the gate entry register by the Security guard on the gate who after physical verification of the goods put a seal on the back of the invoice. This seal mentions the particulars of gate entry no., date and initial of security guard. Then, the goods are received in store where it's receipts are entered*

*in the stock register. Then the movement of goods from the stores to production Deptt. is also recorded in the Stock Register. The copies of relevant stock records showing this movement has also been produced before AO wherein no discrepancy has been noticed. The unit is cover under the Excise Act. The production, and it's sale is recorded in the Excise records. All these records were produced and filed before the AO wherein, again no discrepancy has been noticed. All these documents shows the movement of goods from Haryana to Gurgaon factory of the appellant and thereafter issuance for production and ultimately culminating into sales. The Excise records are audited periodically by the Excise Deptt. Purchase also needs to be reported to the VAT Deptt. through VAT returns. The purchases from these parties also stood declared to the VAT Deptt. which after verification, accepted the same. The appellant also filed a certificate from the Production manager alongwith details of production wise clearance which clearly shows that these items were used and consumed by the Production Deptt. As explained by the appellant, these purchases constitutes the raw material for manufacturing "valves" which is the end product of the appellant which valves are sold to Original Equipment Manufacturing companies like Maruti, Mahindra, Tata etc.. etc.. wherein this item is being used as a motor part. In this case, complete documentary evidences have been filed before the AO wherein no discrepancy has been pointed out. The payment for purchases had been made through cheques. It has also been stated that the appellant, in the normal course makes payment to the suppliers in a span of period of 90 - 120 days, similarly, for these purchases also, the payments have been made within the similar span period. In case, it could have been a case of bogus purchases, then the payment might had been made immediately. The appellant company was incorporated on 09.08.2005. A.Y. 2006 - 07 was it's first year of operation. The G.P. & N.P. declared is of 39.92% and 24.58% as calculated by the appellant in his submissions before me. The appellant also stated that in case the preposition of AO of bogus purchases of Rs. 1,39,41,577/- stands accepted, then manufacturing / Trading A/c. will provide such distorted pictures which is not apparently possible. The appellant also filed the manufacturing trading a/c. prepared as per audited a/c's and a re - casted*

*manufacturing / trading a/c. by treating these purchases as bogus which has been filed before me. I find that in re - castred manufacturing / trading a/c. after reducing the alleged bogus purchase from the already declared purchases and on corresponding reducing the closing stock by the same amount the balancing stock gives a negative figure fo Rs. (-) 1,04,14,642/- which is, in any case, not possible. It is to be stated that the declared closing stock of Rs. 35,26,934/- is as per stock register and in case the incoming of stock is to be reduced by Rs. 1,39,41,577/-, then the stock as per stock register also needs to be, correspondingly, reduced by the same figure. It is a common knowledge that there cannot be a situation of negative stock. In this case, if we go by the preposition of the AO, one land itself at a impossible situation. The natural corollary arises out from this analysis is that it is not possible under these facts, that the stock of Rs. 1,39,41,5771- has not been physically received by the appellant.*

*In the case of **Eland International (P) Ltd. VS. DCIT (2009) 26 DTP 113 (Del.)**, it has been held that when the purchases and sales are recorded and these transactions led to be a profit which is brought to tax, it cannot be said that the purchases are bogus. In ITO, VS. Jai Prakash Sharma ITA NO. 597 / DEL / 2012 decided by Hon'ble Delhi "F" bench vide order dtd, 09.04.2012, it has been held that without bringing anything specific on record regarding purchases, the purchases cannot be termed as bogus. In DCIT VS. Adinath Industries 252 ITR 476 (GUJ.) (confirmed by SC in SLP NO. 16445 - 16448 OF 2000 dated 26.09.2000), it has been held that when the quantity of purchases and value of sales has been accepted by the AO and all purchase are through account payee cheques, supported by Form ST - 38 issued by Excise and Trade Deptt. and nothing adverse has been found out, then in the absence of allegation about insufficiency of trading results the addition h been rightfully deleted. In CIT VS. Leaders Valves (P) LTD. 285 ITR 435 (P &H), it has been held that when purchases made from scrap dealers shown consumed for production, the purchases from these scrap dealers cannot held as bogus. In view of above, I am of the considered opinion that appellant has proved that the genuineness of the purchases.*

*The above purchases of Rs. 1,39,41,577/- includes purchases of Rs 16,87,577/- from Techno Entpp. I have already given a finding above that these purchases are also genuine and cannot be held as bogus. However, the appellant has taken up a contention that Techno Entpp. is not related to Sh. Vinod Parashar. Sh. Sanjay Sharma is the proprietor of this firm. The statement of Vinod Parashar cannot be applied for the purchases made from Techno Entpp. Even the reasons recorded u/s. 147 also does not include Techno Entpp. as a party for whom any information has been received either by the AO. However, I find that the AO in the Asstt. Order in Para - 4.7. had made a mention that subsequent information received from Inv. Wing also suggests that M/s. Techno Entpp. was also connected with Vinod Parashar. However, the Asstt. Order is silent as to whether these observations were confronted to the appellant or not. In any case, I am of the opinion that the adjudication of this contention is now not needed in view of my findings given in the preceding Para, wherein on merits I have hold that these purchases cannot be treated a bogus.*

*I have also examined the legal contention of the appellant that statement recorded on oath in proceedings u/s. 133 A cannot be used for making any addition. The appellant has relied upon the authority of S. Khader Khan So 79 DTR (SC) 184 and Paul Mathews and Sons 263 ITR 101 (KER.) for this legal preposition. The decision of S. Kadar Khan Sons (supra) of Hon'ble Supreme Court arise out from decision of Hon'ble Madras High Court in decision of S. Kadar Khan reported as 214 CTR (MAD.) 589. It is a detailed judgment. In this case, the statement of partner was recorded during survey u/s. 133 A. However, it was retracted later on for some reason. The assessee in that case took up a legal plea that statement recorded u/s. 133 A on oath has not evidentiary value since, under this section statement cannot be obtained on oath. Hon'ble Madras High Court accepted this contention after relying upon various authorities as mentioned in the reported case. The Hon'ble Supreme Court affirmed the said findings. In the present case also, the main adverse material relied upon by the AO is the statement on oath u/s. 133 A of SH. Parashar as is evident from Pg. 5 of the Asstt. order. It is also important to note that in the present case, the statement has not been taken of a director of the appellant company but of*

*a 3<sup>rd</sup> party, at the back of the assessee and further on being asked, the said party could not be made available by the AO for cross examination after summons u/s. 131 stood served on him and the assessee waited for 3 hours and 2 hours respectively on 2 dates when the AO directed the appellant to present for cross examining Sh. Vinod Parashar. Hence, the facts and circumstances of the case in hand are rather more strong than the facts of the cited case and the ratio of the same squarely applies. In view of above, I am of the considered opinion that the statement of Sh. Vinod Parashar cannot be used against the appellant. Apart from this, I have already given a finding above that the purchases of Rs. 1,39,41,577/-, under the facts of the present case cannot be held as bogus. As result thereof, the addition of Rs. 1,39,41,577/-stands deleted."*

12. The Ld. DR relied upon the order of the AO and submitted that documents are not verified by the Ld. CIT(A) and report of investigation proved it to be case of bogus purchase.

13. Ld. Counsel for the assessee however reiterated the submissions made before authorities below. He has submitted that assessee is into manufacturing of Auto Electric parts which is used in motor vehicles and covered by excise. Statement of Sh. Vinod Parashar was recorded in survey, which is not admissible and relied upon the decision of Supreme Court in the case of **S. Khader Khan Sons 79 DTR 184 (SC)**. The statement of Sh. Vinod Parashar was not subjected to cross examination on behalf of the assessee; therefore it cannot be read in evidence against the assessee. In support of above submissions, he has relied upon the Judgment of Rajasthan High court in the case of **CIT vs. Sunita Dhadda, dated 31/07/2017**, in which view of the Tribunal

have been affirmed, in which no opportunity were given to cross-examination of the witness of the Department, therefore, issues were decided in favour of the assessee. The SLP of the Department have been dismissed vide order dated 28/03/2018 by the Hon'ble Supreme Court. In support of the same proposition of law, Ld. Counsel for the assessee relied upon the decision of the Hon'ble Supreme Court in the case of **Andaman Timber Industries 281 CTR 241** and Judgment of Delhi High Court in the case of **Pradeep Kumar Gupta 272 CTR 115**. He has submitted that genuineness of the purchases have been proved by several documents on record. The books of accounts of the assessee has not been rejected, therefore, Ld. CIT(A) correctly deleted the additions.

14. We have considered the rival submissions. It is not in dispute that the assessee filed several replies before AO, supported by documentary evidence to prove genuine purchases. The documents filed on record are copies of the ledger account, bills, invoices, D-3 form issued from sales tax/VAT authority, bank account showing payment for purchases, copy of stock register and the cash book etc. The assessee explained that it is in the business of manufacturing of various types of Auto electric part for vehicles. The Assessee also produced Gate Entry Register, stock register and production records which support the explanation of the assessee that whatever material was purchased from the above three companies have been entered into the statutory registers and the material have been used in the production process. The assessee has been filing regular return with the sales tax/VAT Department and assessee is also covered by Excise Department. No adverse views have been taken either by the

VAT Department or by the Excise Department against the assessee. The AO did not rebut the documentary evidences filed by the assessee. AO has not established any relation of the assessee with the seller. The purchases are consumed in the production. Purchases are supported by Form D-3 issued by VAT Department of the State Government, bills and gate pass and production register and all the purchases are made through banking channel. Therefore, the view of the AO making addition against the assessee of bogus purchases was without any basis. Without purchases no production or sales could have done by the assessee. The production is supported by RG-1 Register and the details supplied to the Excise Department. Therefore, explanation of the assessee should not have been doubted by the AO. It may also be noted here that the production and sales declared by the assessee have been accepted by the AO. The AO while making the addition against the assessee has heavily relied upon the statement of Sh. Vinod Parashar which was recorded on 28.12.2007 in survey u/s 133A on oath. Hon'ble Supreme Court in the case of ***CIT vs. S. Khader Khan Sons 79 DTR 184(SC)*** held as under:-

***"Conclusion: Sec. 133A does not empower any IT authority to examine any person on oath and, therefore, any admission made in a statement recorded during survey cannot, by itself, be made the basis for addition."***

15. It may also be noted here that the assessee asked for the cross-examination of the statement of Sh. Vinod Parashar and AO issued summons u/s 131 of the Act against him for his presence in his office for cross-examination on behalf of the assessee. The



assessee attended the office of the AO but Sh. Vinod Parashar did not turn up for cross-examination on behalf of the assessee. Since Sh. Vinod Parashar is a witness of the Department and he did not turn up for cross-examination on behalf of the assessee, therefore, his statement is not admissible in evidence against the assessee. We rely upon the decision of the Supreme Court in the case of **Kishinchand Chellaram vs. CIT 125 ITR 713 (SC)** and the decision in the case of **Sunita Dhadda (supra)** relied upon by the Ld. Counsel for the assessee. Therefore, nothing is left for the AO to make any addition against the assessee. It may also be noted here, that the AO recorded in the Assessment order when notice u/s 133(6) have been issued against the aforesaid parties but the notice return un-served with the remarks "left without address". It would show that the parties existed at the address given by the assessee and that such enquiry letters have been issued after about 5 years of end of the assessment year. Therefore, same should not be considered adverse in nature against the assessee. Further, such reports and report of the Inspector for making local enquiry, according to the assessee have not been confronted to the assessee. Therefore, such material cannot be used in evidence against the assessee. Further, the AO did not make any further efforts to locate the seller parties for their appearance to examine the issue. The GP/NP rate is reasonably declared by the assessee. If the purchases are excluded, the Profit Rate would be very abnormal and would not be according to the norms of the industry. AO did not bring any evidence on record, if any heavy cash or heavy cash transactions are conducted by assessee. The AO merely on presumption noted that Sh. Vinod Parashar has made cash withdrawals which were

returned to the assessee. There is no basis for making such an allegation against the assessee. It is well settled law that presumptions howsoever may be high but it cannot take placed on legal proof.

16. Considering the facts of the case, in the light of the evidences available on record, we are of the view that Ld. CIT(A) correctly decide the issue in favour of the assessee. There is no basis to hold that assessee made bogus purchases from the above parties. The findings of fact recorded by Ld. CIT(A) have not been rebutted by the Revenue Department through any evidence or material on record. We do not find any infirmity in the order of Ld. CIT(A) in deleting the entire additions. We confirm the findings on fact recorded by Ld. CIT(A) and dismiss the Departmental appeal.

17. In the result, Departmental Appeal for A.Y. 2006-07 is dismissed.

**ITA Nos.-1808 & 1809/Del/2014 for A.Ys. 2007-08 & 2008-09**

18. In both the Departmental appeals, revenue challenged the deletion of additions of Rs. 2,38,25,575/- and Rs. 60,61,480/- on account of bogus purchases. The issue is same as have been considered in Assessment Year 2006-07. Further, the findings of authorities below are same as have been considered in Assessment Year 2006-07. The Ld. CIT(A) for Assessment Year 2008-09 followed his order for immediate preceding assessment years 2006-07 & 2007-08 for deleting the additions.

19. The Ld. Representatives of both the parties submitted that the order in assessment year 2006-07 may be followed in assessment years 2007-08 & 2008-09.

Considering the submissions of the parties and the fact that issue involved in both the Departmental appeals is same and as has been decided in assessment year 2006-07, therefore, following the reasons for decision for Assessment Year 2006-07 (supra), we dismissed the both departmental appeals.

20. In the result, both the Departmental appeals for Assessment Years 2007-08 & 2008-09 are dismissed.

21. In the combined result, all the Departmental appeals are dismissed.

Order pronounced in the open court on 01/8/2018

**Sd/-**  
**(L.P. SAHU)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Dated: 01.08.2018  
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	24/7/2018
Date on which the typed draft is placed before the dictating Member	28/7/2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	30/7/2018
Date on which the fair order is placed before the Dictating Member for pronouncement	31/7/2018
Date on which the fair order comes back to the Sr. PS/PS	1/8/2018
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

ITA No.-1807/Del/2014 & two others.  
M/s Padmini VNA Mechatronics Pvt. Ltd.