

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री धुव्वुरु आर.एल रेड्डी ,न्यायिक सदस्य एवं श्री जीमंजुनाथ ., लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.: **23, 24, 25 & 116/CHNY/2018**

निर्धारण वर्ष / Assessment Years: 2011-12, 2012-13, 2013-14 & 2014-15

M/s. BGR Energy Systems
Ltd.,
Guna Complex 443, Anna Salai,
Chennai – 600 118.

PAN: AABCG 2202J

(अपीलार्थी/Appellant)

The ACIT,
v. Central Circle 3(1),
Chennai.

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.: **1510, 1511 & 1512/CHNY/2018**

निर्धारण वर्ष / Assessment Years: 2011-12, 2012-13 & 2013-14

The ACIT,
Central Circle 3(1),
Chennai -34.

(अपीलार्थी/Appellant)

Smt. Sasikala Raghupathy,
v. **(L/H of late B.G.**
Raghupathy)
New No.60, Old No.100,
IV Street, Abiramapuram,
Chennai – 600 034.

PAN: AAFPR 5779J

(प्रत्यर्थी/Respondent)

CO Nos.: 97, 98 & 99/CHNY/2018

(in ITA Nos.1510, 1511 & 1512/Chny/2018)

निर्धारण वर्ष / Assessment Years: 2011-12, 2012-13 & 2013-14

Smt. Sasikala Raghupathy,
(L/H of late B.G.
Raghupathy)
New No.60, Old No.100,
IV Street, Abiramapuram,
Chennai – 600 034.

PAN: AAFPR 5779J

(अपीलार्थी/Appellant)

The ACIT,
v. Central Circle 3(1),
Chennai -34.

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Sachin Kumar B.P, FCA &
Shri Nitush Ranjan
राजस्व की ओर से /Revenue by : Shri Abani Kanta Nayak, CIT
सुनवाई की तारीख/Date of Hearing : 26.03.2021
घोषणा की तारीख/Date of Pronouncement : 23.06.2021

आदेश /O R D E R

Per BENCH:

This bunch of four appeals in ITA Nos.23, 24, 25 & 116/Chny/2018 filed by the assessee are directed against separate orders of learned Commissioner of Income Tax (Appeals)-19, Chennai, dated 26.10.2017 & 27.10.2017 and pertains to assessment years 2011-12 to 2014-15. The three appeals in ITA Nos.1510 to 1512/Chny/2018 filed by the Revenue and cross objections filed by the assessee are directed against common order of learned Commissioner of Income Tax (Appeals)-19, Chennai dated 20.02.2018 and pertains to assessment years 2011-12 to 2013-14. Since, facts are identical and issues are common, for the sake of convenience these appeals are heard together and are being disposed off, by this consolidated order.

ITA Nos.23, 24, 25 & 116/Chny/2018

2. The assessee has raised common grounds of appeal for all assessment years. Therefore for the sake of brevity grounds of appeal filed for assessment year 2011-12 are reproduced as under:-

1. The contention of the Learned Commissioner of Income-tax (Appeals) is contrary to law and facts of the case.

2. Purchases from 5 Vendors not proved:

2.1 The Learned CIT(A) erred in not appreciating the facts of the case by upholding the addition made by the Learned Assessing Officer amounting to Rs. 71,97,83,480/- in the hands of the appellant being the alleged bogus purchases without any corroborative basis and only on the assumptions made by the Learned Assessing Officer.

2.2 The Learned CIT(A) had erred in considering only the contention of the Learned Assessing Officer which is based on sworn statements to arrive at a conclusion and had failed to consider the Purchase Order, Goods Received Note, Invoices, Project specifications, entries in the books of account and payment made through RTGS to the Vendors to prove these purchases were not bogus in nature.

2.3 The Learned CIT(A) has erred in not adjudicating the ground of appeal filed by the Appellant i.e not considering the income offered by the Appellant during the search proceedings amounting to Rs. 30,00,00,000/- which relates to alleged bogus Purchases. Such, non-consideration has resulted in double taxation of Rs. 30,00,00,000/- which already forms part of the addition made during the AY 2011-12 amounting to Rs. 71,97,83,480/-

Disallowance of Warranty obligation:

3.1 The Learned CIT(A) erred in upholding the disallowance of Rs. 5,65,92,452/-, that represents provision made by the appellant towards warranty for the relevant previous years without considering the facts and appellant's contention.

3.2 The Learned CIT(A) erred in contending that the appellant is only a contractor who executes the projects and therefore, a minimal warranty

provision will be sufficient without considering the fact that the warranty obligations are applicable irrespective of whether the appellant is manufacturer or not.

3.3 The learned CIT(A) has erred in contesting that the minimal requirement of provisions for warranty obligations is well taken care of by the retention monies and has not appreciated the fact that the Retention monies are different from Provisions for Warranty Obligations.

3.4 The Learned CIT(A) has failed to appreciate the fact that under the mercantile system of accounting, the tax payer can make a provision for all liabilities which are foreseen in relation to transactions of the year, whether it is payable during the year or not.

3.5 The learned CIT(A) has erred in confirming the contention of Learned Assessing officer related to denial of credit for Minimum Alternate Tax U/S 115JAA by disallowing warranty obligation.

4. Interest on advances to subsidiaries:

4.1 The Learned CIT(A) erred in upholding the addition of Rs.1,33,70,507/-, which represents interest expenditure incurred, which according to the learned Assessing Officer, pertains to amount diverted to sister concerns without charging interest.

4.2 The Learned CIT(A) has erred in stating that the Hon'ble ITAT and CIT(A) for the AY 2007-08, 2008-09 & 2009-10 had disallowed the said expenditure. Whereas, the Learned CIT(A) passed a favourable order and the Hon'ble ITAT restored the matter to the file of the Learned Assessing Officer for verification.

4.3 The Learned CIT(A) has erred in upholding the addition without considering the fact that the loans given were in the nature of commercial expediency.

4.4 The Learned CIT(A) had also failed to consider that disallowance cannot be made in cases where loan was given in mutual interest and commercial expediency- S.A Builders Ltd vs. CIT(A) 288 ITR 1 (SC).

5. The appellant seeks your leave to add, alter, amend, or delete any of the grounds urged, at the time hearing.

3. The brief facts of the case extracted from ITA No.23/Chny/2018, for the assessment year 2011-12 are that the assessee M/s. BGR Energy Systems Ltd., (BGRESL) is engaged in the business of manufacture of capital goods and in construction of EPC contracts. The assessee company further executes engineering, procurement & construction contracts for power plants, oil & gas industries and process industries. filed its return of income for the assessment year 2011-12 to 2013-14 u/s.139(1) of the Income Tax Act, 1961 (hereinafter the 'Act'). A search and seizure operations u/s.132 of the Income Tax Act, 1961 was carried out in the case of assessee on 18.02.2014. During the course of search, bills books / purchase invoices belonging to the following five concerns were found and seized as exhibit

- i. ANN/VV/BGR-Office/B&D/S-1
- ii. ANN/VV/BGR-Office/B&D/S-2

- a. M/s. Sonal Steel Trading Pvt. Ltd.
- b. M/s. Megha Enterprises
- c . M/s. Satyam Enterprises
- d. M/s. United Brothers
- e. M/s. Meenakshi Enterprises

During the course of search Shri P.R. Easwer Kumar, CFO of the assessee company was available. He was requested to furnish details regarding the manner in which financial operations of the company was being managed. As informed by him, the company has deployed SAP software solutions for managing operations. The modus deployed include HR, Materials Management and Finance & Control. This application software imposed certain level of discipline on the user. During the course of search, assessee was asked to explain the purchases made from five concerns including evidences like purchase bills, delivery notes, transport bills, goods receipt notes, etc. In response, the assessee could not furnish necessary supporting evidences in respect of purchases from above five parties. Therefore, actual purchases from said parties were verified with reference to internal control system followed for regular purchases and found that purchase from above five parties were always made by making advance payment by RTGS to one of the person identified as bill traders. The payment was always processed and initiated by late B.G. Raghupathy. The purchase order approval was also made by late B.G. Raghupathy. The invoices were received by company in chairman's office. The materials were always shown to be consumed as non-billable

materials used in the work. The assessee could not produce any employee of the company who received material nor did they produce any other person who received the material on behalf of the company. The company could not produce delivery challan or any proof at all. Further, all these cases, material received entry is made in SAP as per instructions of CMD's office as against general practice of entries being made after materials are physically received by the receiver.

4. During post search investigation, Shri Tilok Chand Parmer, Managing Director of M/s. Sonal Steels Pvt. Ltd., was searched along with the company. M/s Sonal Steels Pvt. Ltd., was found to be engaged in purchase and sale of stainless steel Tiffin-box items. Apart from the transactions from M/s. BGRESL, there are no other huge purchases or sale. A statement was recorded from Shri Tilok Chand Parmer, where he has admitted that he had neither purchased these items nor sold these items to any person including BGRESL. He had further stated that he had supplied only bills to the company for a commission. He, further, explained the modus operandi of bogus bill trader as per which he had received RTGS payments from BGRESL and the same were further rooted through

other concerns in the market including concerns belonging to Shri Dileep Kumar Jain and Shri B. Kamalesh Kumar Jain. He had also stated that one Shri Dhanaram was employed by Shri Dileep Kumar to operate several bank accounts in Purasawalkam branch of Axis Bank and further he was also withdrawing cash that was finally returned to M/s. BGRESL.

5. During the course of assessment proceedings, the AO called upon the assessee to produce necessary evidences including bills and vouchers in support of purchase from five parties. The AO had also called upon the assessee to produce parties in person for examination. The assessee has furnished purchase bills from said parties, however, could not furnish any other evidences including delivery notes, lorry receipts and goods receipt note to support purchases. The assessee had also not able to produce the parties in person. The AO on the basis of information furnished by the assessee has issued summons to the so called five suppliers. In response, they appeared before the AO and filed necessary details. The AO had also recorded statement from them. During the course of assessment proceedings, they have reiterated their statement given during the course of search and confirmed that except

issuing bills they does not supplied any goods to the assessee. They further clarified that after receipt of payment through RTGS, cash was withdrawn from bank and returned to the assessee. The AO had also given opportunity of cross examination of the parties to the assessee. During the course of assessment proceedings, Shri P.R. Easwer Kumar, CFO of the assessee company was allowed to cross examine Shri Tilok Chand Parmar in presence of the AO. Thereafter, the AO has questioned Shri H. Venugopal of CPSG about this specific purchase from bogus bill traders for which, he could not establish the purchase with necessary proof. Therefore, the AO on the basis of information collected during the course of search and post search investigation came to the conclusion that purchases from above five parties are not genuine which are not supported by necessary evidences. The AO further was of the opinion that they merely provided invoice copies and returned cash to the company and this was done for a small commission of 0.25% of total value of bills issued to the assessee. The AO further noted that these bill traders did not even purchase materials allegedly sold by them. They have routed the payment received from the assessee to other concerns and finally returned cash to the company through one Shri Ravi Kumar. Therefore, he

opined that purchases from so called suppliers of steel are bogus in nature which was taken to inflate expenditure.

6. The AO has discussed the issue at length in light of statements recorded from the assessee and its employees and also statement recorded from Shri Tilok Chand Parmar, one of the suppliers of alleged five bogus bill suppliers. The AO has also taken support from letter of Shri Tilok Chand Parmar dated 04.02.2016, submitted before AO during the course of assessment proceedings, where he has stated that he stands by his depositions made before the DDIT(Inv) on 23.02.2014. The AO has taken support from the statement of Shri J. Ganapathy, Proprietor of M/s. Megha Enterprises recorded on oath u/s.131 of the Act, on 16.02.2016, where he had admitted that he had opened an account with Union Bank of India, Sowcarpet branch at the behest of one Shri Behru Singh in the name of M/s. Megha Enterprises. He further submitted that he had done this work to facilitate somebody else's transactions out of sheer necessity of money. The AO had also taken support from statement of Shri M. Govind, Proprietor of M/s. United Brothers, where he had deposed that he was doing business of sale of utensils and vessels till 2013. He

further stated that he was not aware of the existence of M/s. BGR Energy Systems Pvt. Ltd., nor did he do any business with them. However, when he was shown the bank extract of Account No.37941 held in the name of United Brothers, he submitted that he had opened this bank account at the instance of Shri Behru Singh for a commission. Therefore, the Id.AO opined that when the assessee is making its purchases from big suppliers like SAIL, Tata Steel, JSW & NRIL, failed to explain why it has gone for purchases from small time vendors like these five parties based at Chennai. He further noted that materials purchased from big traders like SAIL, Tata Steel, etc., do have delivery challans to their purchase invoices whereas, purchase invoices of these five parties are without delivery challans. From the above, it is very clear that purchases from above five parties are bogus in nature and nothing but accommodation entries. Accordingly, purchases from five parties to the extent of Rs.113,48,73,346/- for assessment years 2011-12 to 2013-14 has been treated as bogus purchases and added to total income of the assessee. The relevant findings of the AO are as under:-

Issues springing subsequent to initiation of Sec.153A proceedings

2.4 During the course of search action u/s 132 on 18.02.2014 at the business premises of M/s. BGRESL, Bill book/purchases invoices

belonging to the following five concerns were found seized as exhibit

- i. ANN/VV/BGR-Office/B&D/S-1
- ii. ANN/VV/BGR-Office/B&D/S-2

- a. M/s. Sonal Steel Trading Pvt. Ltd.
- b. M/s. Megha Enterprises
- c . M/s. Satyam Enterprises
- d. M/s. United Brothers
- e. M/s. Meenakshi Enterprises

2.5 Notices u/s 142(1) along with specific questionnaire were issued. The assessee company's reply to the notices have been considered. The issues springing up from the notices u/s 142(1) and the corresponding replies from the assessee-company are summarized as under

Non-production of the five vendors: The assessee-company was asked to produce the following five vendors before this office for examination;

- a. M/s. Sonal Steel Trading Pvt. Ltd.
- b. M/s. Megha Enterprises
- c . M/s. Satyam Enterprises
- d. M/s. United Brothers
- e. M/s. Meenakshi Enterprises

The assessee.-company, vide its reply dt. 27.01.2016 has submitted that it had closed its accounts with the above vendors and that it is no longer dealing with them, Further, it submitted that it had sent letters by regd. post to the above five vendors to appear before this office. Strangely, the assessee-company had chosen to close down its transactions with the above five Vendors with whom it had done substantial transactions during the previous years relevant to the assessment years 2011-12, 2012-13 and 2013-14. Further, the assessee company has proved that it had indeed made genuine efforts to trace the five vendors apart from merely stating that it had sent letters by regd. post to those vendors.

However, this office made efforts to trace the five vendors and succeeded in locating three of them namely, 1. Shri Tilok Chand Parmar, Managing Director, M/s. Sonal Steel Trading Co. Pvt. Ltd., 2. Shri Janakiraman Ganapathy, Prop: M/s. Megha Enterprises and 3. Shri Govind, Prop: M/s. United Brothers.

i) Shri Tilok Chand Parmar, vide letter dated Nil filed on 04.02.2016 submitted by him during the course of sec, 153A proceedings has submitted that he stands by his depositions made before the DDIT(Inv) on 23.02.2014. Vide his submissions, he has admitted that he has done only Bill Trading with M/s. BGR Energy Systems Pvt. Ltd. and has actually returned back the money to Shri B G Raghupathy group through an intermediary.

ii) Shri J. Ganapathy, Prop. M/s Megha Enterprises was examined under oath u/s 131 of the Income Tax Act 1961 on 16.02.2016. In his deposition, he has submitted that he had opened an account Union Bank of India, Sowcarpet Branch at the behest of one Mr Behru Singh in the name of M/s. Megha Enterprises. Further he submitted that he had done this work of opening a bank account to facilitate somebody else's transaction out of sheer necessity of money. Further he has stated that he is not aware of the transactions carried in this account since he had signed on the blank cheque leaves at the behest of Mr. Behru Singh. Shri Ganapathy submitted that he got a commission of Rs 15,000/- for the trouble he took in opening this bank account for Behru Singh and signing blank cheque leaves. Shri Ganapathy submitted that the signatures on the purchase invoices of M/s. Megha Enterprises were not his. Further when he was shown the purchases invoices in the name of M/s. United Brothers found and seized from the premises of M/s.BGR Energy Systems Pvt. Ltd. on 21.02.2014 vide ANN/VV/BGR-office/B&D/S-2, Shri Ganapathy submitted that the signatures on these invoices were not his. The copy of statement recorded from Shri Ganapathy was forwarded to M/sBGR Energy Systems Pvt. Ltd.

iii) Shri M. Govind Prop: M/s.United Brothers was examined on oath on 25.02.2016. He deposed that he was doing the business of sale of utensils and vessels till 2013. He has stated that he was not aware of the existence of the concern M/sBGR Energy Systems Pvt. Ltd. nor did he do any business with M/s.BGR Energy Systems Pvt. Ltd. Further, when he was shown the bank extract of Account No37941 held in the name M/s, United Brothers, he submitted that he had opened this bank account at the instance of one Mr.Behru Singh for a commission. He submitted that his signatures were taken on all the cheque leaves. Further, Shri Govind expressed surprise at the extract of transactions done in this account. Further when he was shown the purchases invoices in the name of M/s. United Brothers found and seized from the premises of M/s. BGR Energy Systems Pvt. Ltd. on 21.02.2014 vide ANN/VV/BGR-office/B&D/s-2, Shri Govind submitted that the signatures on these invoices were not his. A copy of this deposition was forwarded to M/s. BGR Energy Systems Pvt. Ltd.

The statements of Shri Govind and Shri Ganapathy are made part of this order as Annexure C.

2.6 On 28/03/2016, Shri P R Easwar Kumar, president and CEO of M/s BGRESL was afforded the facility of cross-examining Shri Tilok Chand Parmar M. D of M/s Sonal Trading Co. Pvt. Ltd, and Shri, J, Ganapathy Prop: M/s Megha Enterprises. At the start of the proceedings Both Shri Tilok Chand Parmar and Shri J. Ganapathy requested that they be asked questions interacted in the Tamil language which was acceded to by Shri. P. R. Easwar kumar. The English version of the cross examination proceedings is made an Annexure to this order vide Annexure D.

The following points evolve/establish themselves from the cross examination proceedings:

1) Shri. Tilok Chand Parmar stands by his sworn statement made before the DDIT(lnv) on 18.02.2014 that he had supplied bills for a

commission to M/s BGRESL and that there was no physical transfer of materials/goods.

2) Further, Shri Tilok Chand Parmar had supplied Bills to the tune of Rs 8 crores(app) between the period Jan 2012 to Dec 2012

3) There is a pending dispute between Shri. Tilok Chand Parmar and M/s BGRESL regarding this balance bills supplied by M/s Sonal Steel Trading Pvt. Ltd to M/s BGRESL which is yet to be honored by M/s BGRESL for some unknown reason. Further, it is clearly established now that M/s BGRESL had purchased only Bills from M/s Sonal Steel Trading Co. Pvt Ltd. or else, during the course of cross examination proceedings why did not the issue of transfer of materials came in? And, why Shri, Tilok Chand Parmar mentioned about only pending Bills/Payment from M/s BGRESL without referring to the corresponding transfer of material? And why did Shri. P. R. Easwar Kumar ask Tilok Chand parmar to furnish copies of Bills and purchase orders instead of asking him (Tilok Chand Parmar as to when he has delivered the goods, if at all there was a genuine transfer of the material from M/s. Sonal Trading Co. Pvt. Ltd. to M/s. BGRESL?

4) Shri J. Ganapathy Prop: M/s. Megha Enterprises Shri P.R. Easwar Kumar that he has not done any business with the concern which Shri P.R. Easwar Kumar represents and that one Mr. Behru Singh did that Bank Operations. Further, Shri J. Ganapathy submitted to Shri P.R. Easwar Kumar that he has signed on blank cheque leaves of the instance of one Mr. Behru Singh for the lure of some quick money and that he has nothing to do with M/s. Megha Enterprises.

5) Shri Easwar Kumar was not in position to further probe Shri J. Ganapathy.

2.7 It is crystal clear from the preceding paragraphs that the assessee company M/s.BGR Energy Systems Pvt. Ltd has indulged in bill trading transactions with the concerns M/s. Sonal Steel Trading Co. Pvt. Ltd., M/s Megha Enterprises and M/s. United Brothers. In the ease of M/s. Sonal Steel Trading Co., Pvt., the MD Shri Tilok Chand Parmar has deposed that he had only supplied Sills to M/s.BGR Energy Systems Pvt. Ltd for a commission, Whereas, in the cases of

M/s. Megha Enterprises and M/s. United Brothers M/s.BGR Energy Systems Pvt. Ltd has done transactions/effectuated business without the knowledge of the very owners of the bank account/concerns.

2.8 Further the startling revelation is the possession of forged purchase invoices in the custody of M/s BGR Energy Systems Pvt. Ltd with regard to these two entities found and seized u/s.132 on 21.02.2014. Surely the purchase invoices cannot be forged if the transactions were to be genuine. Otherwise, what was the necessity for M/s.BGR Energy Systems Pvt. Ltd to have in its custody forged purchase Invoices? Hence, it is established beyond doubt that the purchases made by M/s.BGR Energy Systems Pvt. Ltd from these live vendors based on Chennai are bogus. But, strangely, M/s.BGR Energy Systems Pvt. Ltd claims genuinity of transactions on the strength of transactions on the strength of possession of these manufactured invoices.

2.9 Conversely, this explains why M/s.BGR Energy Systems Pvt. Ltd should go for purchases from small-firm 'vendors' like these five parties based at Chennai when its regular purchases are from big players like SAIL, TATA STEEL, JSW, & NRIL. The stark intention behind the purchases from the five local vendors based at Chennai stands doubly exposed. Stocks purchased from SAIL, TATA STEEL, JSW & NRIL do have delivery challans attached to their purchase Invoices whereas the purchase invoices of these five parties are without delivery challans-simply because they are bogus, as they are merely raised without actual transfer of goods and materials mentioned therein.

3.1 Hence, vide discussions made above, and vide series of clinching evidences as proved and point above, it is hereby held that M/s. BGR Energy Systems Pvt has indulged in bogus purchases to the extent of Rs.113.48 crores from the following five parties for the respective previous years relevant to the assessment years as below:

Amount in Rs.

Vendor Name	Assessment year			Total (Amt.)
	2011-12	2012-13	2013-14	
M/s. Meenakshi Enterprises	22,15,82,638	6,68,83,182		28,84,65,820
M/s. SonalSteel Trading Pvt. Ltd.	20,35,50,872	9,67,60,019		30,03,10,891
M/s. United Brothers	19,99,18,084	7,46,42,598		27,45,60,683
M/s. Satyam Enterprises	4,33,50,494	11,09,15,289	1,30,20,120	16,72,85,902
M/s. Megha Enterprises	5,13,81,392	5,28,68,658		10,42,50,049
	71,97,83,480	40,20,69,745	1,30,20,120	113,48,73,346

Since the above amounts are held to be bogus purchases, the same are disallowed during the respective assessment years.

3.2 During the course of search while deposing u/s.132(4) at the premises of M/s.BGRESL on 16.04.2013, Smt. Swarnamughi Karthik Director of M/s. BGRESL was queried {Q.No.7 of the inability of M/s. BGRESL to furnish proper material in support of purchase made from the above five concerns. In reply, Smt. Swarnamughi Karthik offered an additional income of Rs.30,00,00,000/-. Further vide letter dated 29.02.2016 filed on 01.03.2016 during the course of assessment proceedings u/s.153A, M/s. BGRESL confirmed additional disclosure of Rs.30,00,000/- made by Smt. Swarnamughi Karthik on 16.04.2014 in the hands of M/s. BGRESL for the A.Y. 2011-12.

The assessee Group has come forward voluntarily to accept the unaccounted income earned by it to the extent of Rs.30 crores. The admission is in the wake of the fact that they were not in a position to give details and supporting evidence to establish that they had in fact purchased iron and steel materials from the bogus bill traders. This admission proves that the assessee company does not have the supporting documents and witnesses to show that they had made these purchases. If the purchases are genuine they should establish the purchases and claim that the books are correct and hence there is no need to admit any disclosure at all. During the course of the search and assessment proceedings sworn statements recorded from the witnesses viz., Shri Tilok Chand Parmar, Shri Dhanaram and Shri

Kamalesh Parmar seen in the light of the bank statements of various bogus bill traders clearly indicate that the persons to whom the assessee transferred money as advance payment for purchase of certain steel items did not actually sell any such items to the assessee. These persons were not in the business of trading in such material. These persons have routed the money to other accounts and obtained cash after several layers of bank transfers. The cash obtained was given to the company as admitted by the bogus till traders.

7. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A). Before the Id.CIT (A), the assessee has filed detailed written submission which has been reproduced at para 11 at pages 13 to 16 of Id.CIT(A) order. The sum and substance of arguments of the assessee before the Id.CIT(A) are that purchase from above parties are genuine in nature which are supported by necessary evidences including purchase bills. The assessee has made payments against said purchase through RTGS. The purchases were made at work place as per requirement of work and hence, merely for non-production of certain evidences including delivery challans, purchases cannot be treated as bogus in nature. The assessee has made attempt to negate observations of the AO in light of statement of certain parties and argued that sworn statement cannot be conclusive evidences and what is required to be seen is whether purchases

are supported by evidences or not. The assessee has also made an attempt to negate observation of the AO on non-production of parties and submitted that despite our failed attempt to trace parties, Department has summoned the parties thereby, existence of parties were proved beyond any doubt. Therefore, when the purchases were supported by purchase bills, GRN and further payment through proper banking channel and further these purchases which find place in books of accounts maintained by the assessee, statement from the same party alone cannot be determinative of confirming the purchase as non-genuine.

8. The Id.CIT (A) after considering relevant submissions of the assessee and also taken note of various facts brought out by the AO held that the assessee was not able to produce transport bills as well as stock register for receipt of goods, other than production of bogus bills and claim of cheque payments. The assessee has not been able to adduce any defense in support of its claim. The statement given by Shri Tilok Chand Parmar and others remain uncontroverted. The body of evidence is overwhelmingly against the claim of the assessee. The onus to establish and prove expenditure claimed in the profit and loss account has remained to

be discharged by the assessee. Therefore, the Id.CIT(A) opined that there is no error in additions made by the AO towards alleged bogus purchases for assessment years 2011-12 to 2013-14 and hence, sustained additions made by the AO and rejected grounds of appeal taken by the assessee. The relevant findings of the CIT(A) are as under:-

“12. The submissions made by the assessee are verified. The assessee merely states that the payments were made by cheque and that there is no proof with the department that any cash was received. The assessee further claims that the sworn statements are not conclusive evidence, Assessee also claims that the purchases were consumed in the construction activities. In this regard, it is further noted that the assessee was not able to produce the vendors for any verification. Assessee was also not able to produce the transport bills as well as stock registers for receipt of goods. Other than the production of bogus bills and the claim of cheque payments, the assessee has not been able to adduce any defense in support of its claim. The statements given by Shri Parmar and others remain uncontroverted. The body of evidence is overwhelmingly against the claim of the assessee. The onus to establish and prove the expenditures claimed in the profit and loss account has remained to be discharged by the assessee. In this regard, the following judicial decisions are taken on record.

a. In order to claim that an expenditure falls u/s.37(1), the burden of proving the necessary facts in that connection is on the assessee.

CIT Vs Calcutta Agency Ltd (Supreme Court) 19 ITR 191
Lakshimaratan Cotton Mills Co. Ltd Vs. CIT (SC) 73 ITR 634

b. Mere production of vouchers in support of the claim for deduction of the expenditure would not prove the claim made by the assessee. It is his duty to prove payment especially when the ITO doubts the genuineness thereof.

CIT Vs. Chandravilas Hotel (Guj) 164 ITR 102
CIT Vs. Modi Stone Ltd (Del.) 203 Taxman 123

c. The broad proposition that once there is tax audit u/s.44AB, the ITO should not insist upon production of records or vouchers or details cannot be laid down

Goodyear India Ltd Vs. CIT(Del.) 246 ITR 116.

d. Onus does not get discharged by mere filing of confirmation letters.

United Commercial & Industrial Co. (P.) Ltd (187 ITR 596) (Cal)

e.. Payments made by account payee cheques do not make the transactions sacrosanct- Onus not discharged.

Precision Finance (P.) Ltd (208 ITR 465) (Cal.)

f. Furnishing of IT assessment and PAN etc., is not sufficient to discharge onus.

Korlay Trading o. Ud. (232 ITR 820)(Cal.)

13. Considering the facts of the case as well as the judicial precedents as above, the additions of Rs. 71,97,83,480 for the Assessment Year.2011-12, Rs.40,20,69,745 for the Assessment Year.2012-13 and Rs.1,30,20,120 for the Assessment Year.2013-14 made by the Assessing Officer are sustained. The grounds of appeal are dismissed on this issue.”

9. The Id.AR for the assessee submitted that the Id.CIT(A) has erred in not appreciating the fact of the case before upholding additions made by the Id.AO for alleged bogus purchases without any corroborative basis and only on assumption made by the AO. The Id.AR further submitted that the Id.CIT(A) had erred in considering only the contention of the Id.AO, which is based on

sworn statement to arrive at conclusion and had failed to consider purchase order, goods received note, invoices, project specifications, entries in books of accounts and payment made through RTGS to vendors to prove these purchases were not bogus in nature. The Id.AR further submitted that the AO has not made out a case that there are variations in consumption of raw materials for the year under consideration when compared earlier years nor it is a case of non-production of necessary evidences including bills and vouchers. The AO had also failed to point out any discrepancy in books of accounts maintained by the assessee. In fact, the assessee has furnished all possible evidences to prove purchases from above parties. Further, it is noteworthy that assessee being a listed company is subject to robust internal control and audits which are verified by SEBI, Bankers and Auditors and other statutory authorities like Commercial Taxes Department, Central Excise Department, project technical team like Engineers and Electricity Board.

10. The Id.AR further submitted that the assessee company also issues a monthly audit plan to its internal auditors, which needs to be covered by them and the audit report is not having

any adverse comments on purchase from above parties. The Id.AR further submitted that although those parties insisted on pure cash payment as part of their supply, the assessee company, a public listed company is keen to deal major purchase transactions by any mode other than through banking channel. The Id.AR further submitted that although the assessee has furnished all evidences to prove purchase from above parties, the Id.AO as well as the Id.CIT(A) have ignored all evidences filed by the assessee and made additions on the basis of sworn statement recorded from those parties without appreciating the fact that confession / sworn statement is not conclusive evidences. The Id.AR further submitted that although the assessee has filed necessary supporting evidences to support purchase from five parties but to cover up certain discrepancies in purchases made from those parties has voluntarily offered an additional income of Rs.30 crores and has also disclosed said additional income in the return of income filed u/s.153A of the Act. The AO ignoring all these evidences has made further addition towards alleged bogus purchases only on suspicious grounds. Therefore, he submitted that additions made by the AO towards alleged bogus purchases needs to be deleted. In this regard, he has relied upon certain

judicial precedents including decision of Hon'ble Supreme Court in the case of Pullangode Rubber Produce Co. Ltd., v. State of Kerala, (1973) 91 ITR 18. The cases laws relied upon by the assessee are as under:-

- i) ITAT, Pune in the case Anil Nandkishore Goyal, Jalna v. assessee, ITA No.1256/PN/2012
- ii) ITAT, Kolkata in the case of Acchyalal Shaw vs. Income Tax Officer, ITA No.1977/Kol/2008
- iii) Hon'ble Supreme Court in the case of Umacharan Shaw & Bros. vs. CIT, (1959) 37 ITR 271
- iv) Hon'ble Bombay High Court in the case of CIT vs. Nikunj Eximp Enterprises Pvt. LTd, 5604 of 2010
- v) Hon'ble Kerala High Court in the case of CIT vs. M/s. Interseas, ITA No.77 of 2009
- vi) ITAT, Mumbai in the case of Vipin Bhimraj Shah vs. ACIT, ITA No.6381 of 2014
- vii) ITAT, Mumbai in the case of DCIT vs. Shri Rajeev G Kalathil, ITA No.6727 of 2012
- viii) ITAT, Mumbai in the case of Ramesh Kumar & Co. vs. ACIT, ITA No.2959 of 2014
- ix) ITAT, Mumbai in the case of Vishal P. Mehta, Mumbai vs. Department of Income Tax, ITA No.5313 of 2013

11. The Id. DR on the other hand supporting order of the Id.CIT(A) submitted that the facts brought out by the investigation conducted during the course of search and post-search

investigation clearly indicate that the assessee was indulged in taking accommodation entries of bogus purchases bills from non-existing / bogus supplier of materials, which is evident from the fact that alleged suppliers were categorically agreed in their sworn statement recorded u/s.132(4) of the Act, that they never supplied any goods/materials to the assessee but issued bills against receipt of RTGS and further money has been withdrawn and returned to the assessee through one Shri Ravi kumar, employee of assessee company. The Id.DR further referring to the statement recorded from Shri Tilok Chand Parmar and its associates submitted that in fact he had reiterated his admission by filing a letter before the AO that he stands by his admission made before the DDIT(Inv) on 23.02.2014. Further, during course of cross examination of these parties by the assessee through its CFO, Shri P.R. Easwer Kumar, Shri Tilok Chand Parmar stands by his sworn statement made before the authorities and stated that he had supplied bills for a commission and that there was no physical transfer of material/goods. The Id.DR further submitted that even otherwise the AO has brought out various facts to believe these purchases are bogus and as per which the assessee had a strong internal control mechanism for regular purchases, as per which a

systematic records is maintained in SAP software whereas, these purchases from these five parties are not having any regular internal control procedure adopted by the assessee company. Moreover, the assessee could not furnish any other evidences except purchase bills and payment through proper banking channel. It is a well settled principle of law that payment by cheque itself is not a sufficient evidence to justify purchases when other evidences goes to prove the fact that purchases are bogus and are nothing but accommodation entries. The AO as well as the Id.CIT(A) have brought out various reasons to hold purchases are not genuine and hence there is no reason to take a different view on the issue.

12. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We have carefully considered case laws relied upon by the assessee as well as the revenue. The AO has made additions towards purchases from certain alleged bogus suppliers on the ground that the assessee could not substantiate purchase from those parties with necessary evidences. The triggering point towards addition for bogus purchase is search conducted in the premises of the

assessee. During the course of search, certain bill books/purchase invoices belonging to the following five concerns were found and seized as exhibit

- i. ANN/VV/BGR-Office/B&D/S-1
- ii. ANN/VV/BGR-Office/B&D/S-2
- a. M/s. Sonal Steel Trading Pvt. Ltd.
- b. M/s. Megha Enterprises
- c . M/s. Satyam Enterprises
- d. M/s. United Brothers
- e. M/s. Meenakshi Enterprises

The AO was of the opinion that the assessee was indulged in obtaining accommodation entries of bogus purchase bills from non-existence suppliers to inflate expenses. The AO has taken support from various facts including bill book/purchase invoices found in the possession of the assessee during the course of search of suppliers, statement recorded from alleged bogus bill traders and standard operating procedures followed by the assessee to record purchases in their books of accounts. According to the AO, the assessee has followed meticulous standard operating procedures for purchases in their books of accounts in SAP software. The AO has listed out various stages of procurement of materials and payment against such purchases followed by the assessee. The AO then compared standard operating procedure followed for purchase

to purchases from alleged five bogus parties and find that in respect of purchase from these five parties, the assessee did not follow standard operating procedures. The AO had also taken support from statement of Shri Tilok Chand Parmar recorded during the course of search and also letter filed by him during course of assessment proceedings on 04.02.2016, where he had standby his admission made before DDIT(Inv) on 23.02.2014 that he has done only bill trading with assessee and has actually returned money to Shri B.G. Raghupathy through one Shri Ravi kumar. The AO has also taken support from statement recorded from associates of Tilok Chand Parmar like Shri J. Ganapathy, Proprietor of M/s. Megha Enterprises, Shri M/ Govind, Proprietor of M/s. United Brothers, where they have admitted that they worked as conduit to Shri Tilok Chand Parmar for facilitating bill trading business and withdraw money from bank account. The AO has also taken support from inputs of cross examination of Shri Easwer Kumar with Shri J. Ganapathy and Shri Tilok Chand Parmar, where Shri Easwer Kumar was not in a position to counter the admission made by those parties. Therefore, he opined that purchases from alleged five parties are bogus in nature which are not supported by necessary evidences and hence, made additions to total income.

13. We have given our thoughtful consideration to reasons given by the AO to arrive at a conclusion that purchase from five parties are bogus in nature which are not supported with necessary evidences and we ourselves in agreement with reasons given by the AO to reach to said conclusion, because the assessee had failed to explain why it has possessed bill book/purchase invoices belonging to those five concerns in its premises. We, further, noted that during the course of search and post-search investigation, the assessee could not file necessary supporting evidences including delivery challans, lorry receipts and goods receipt notes regarding those purchases except filing purchase bills from those parties and claiming that payment against such purchases are made through proper banking channel. It is an admitted fact that payment by cheque itself is not a sufficient evidence to prove the alleged bogus purchases when all other evidences goes to prove a fact that purchases are bogus in nature. The assessee needs to bring on record supporting evidences to dispel the doubt and suspicion on those purchases. In this case, except filing bills and payment by cheque, the assessee could not produce other supporting evidences like delivery challans, lorry receipts and goods receipt notes whereas, these documents are very much available with regard to

purchases from other parties. We, further noted that the assessee company, a listed public limited company has followed standard operating procedures for purchases, as per which purchases are made through various stages of procurement which has been authenticated and approved by various persons. Further, the assessee has made purchases of steel from major suppliers like Tata Steel, SAIL, JSW and NRIL and those are public limited companies and further those purchases are having all evidences including lorry receipt, delivery challan and goods receipt notes. The assessee having a practice of procuring materials from reputed suppliers like SAIL, Tata Steel, and JSW has failed to explain why it has made purchases from small time vendors from Chennai. Further, voluminous evidences gathered during the course of search and post-search investigation including statements recorded from alleged parties were clearly indicate that the assessee was indulged in obtaining accommodation entries of bill trading without any supply of materials. In fact, Shri Tilok Chand Parmar and its associates have right from beginning admitted that they never supplied any materials to assessee and further issued only bills against receipt of RTGS. They further stated that they have withdrawn money from the bank and handed over to Shri B.G.

Raghupathy through its associate Shri N. Ravi kumar after deducting their commission. They further stated that they have done this for a meager commission of 0.25% value of total purchases affected from those parties. From the above, it is crystal clear that the assessee company has indulged in bill trading transactions with the help of Shri Tilok Chand Parmar and his concerns M/s. Sonal Steel Trading Co. Pvt. Ltd., M/s. Megha Enterprises and M/s. United Brothers. Therefore, we are of the considered view that the assessee has failed to file necessary evidences in support of purchases from those five parties and hence, the AO as well as the CIT(A) were right in arriving at a conclusion that purchases from those parties are bogus in nature.

14. Having said so, let us come back to arguments of the assessee. The Id.AR for the assessee has made various arguments to counter the finding of fact recorded by the AO. We have gone through various arguments advanced by the Id.AR for the assessee and find that there is no substance in arguments of the Id.AR for the assessee because in the present case, the AO has made additions to bogus purchases not only on the basis of statements recorded from those parties but also on the basis of various facts

gathered during the course of search and post-search investigation which clearly shows a point that purchases from alleged five parties have never had been purchased but only an accommodation entries of bill trading was obtained. No doubt, it is a well settled principle of law that sworn statement is not conclusive evidence in order to make any additions. The AO has to bring on record corroborative evidences to support the confession statement taken during the course of search. In this case, additions made by the AO is not only on the basis of sworn statement but also on the basis other evidences collected during the course of search including discrepancies in books of accounts regarding accounting of those purchases. As per fact brought out by the AO, the assessee has followed meticulous SOP for purchases whereas, for the purchases from these five parties said SOP is missing. Further, during the course of search Smt. Swarnamughi Karthik, Director of assessee company in her sworn statement recorded u/s.132(4) of the Act on 16.04.2013 has offered additional income of Rs.30 crores to cover up various discrepancies including inability of the company to furnish proper supporting evidences for purchases made from above five parties. Further, during the course of assessment proceedings vide letter dated

29.02.2016, the assessee has confirmed additional income offered by Smt. Swarnamughi Karthik. From the above, it is clear that the assessee group does not have supporting documents and evidences to show that they had made purchases from those parties. If the purchases are genuine, the assessee could have produced necessary evidences and also produced those parties when AO called upon the assessee to produce those parties for verification. Although, the AO has traced out those parties by using his statutory powers and obtained statements from them, but the assessee has failed in its duties to produce the parties when the AO has called upon to do so. From the above, it is very clear that the so called parties were not directly in connection with the assessee and assessee has arranged bogus bills through intermediaries. This fact has been admitted by alleged bogus bill supplies. Therefore, we are of the considered view that there is no merit in arguments of the assessee that the AO has made additions towards alleged purchases only on the basis of statement recorded from those parties without further evidences.

15. The other arguments made by the AR of the assessee that the assessee has a robust internal control policy to record

purchases and further its books of accounts are subject to audits by various statutory authorities and hence, question of doubting those books of accounts does not arise. We find that although the assessee was subjected to various statutory regulations including audit by SEBI and other authorities but fact remains that issue in question was whether purchases made from certain parties are genuine transactions or only an accommodation entries of bogus purchase bills to inflate expenditure. It is a well known fact in business circle that when a person obtains any accommodation entries, necessary formalities of accounting those entries in its books of accounts and reporting to statutory authorities will be done as per law. But, just because those purchases are recorded in books of accounts and finds place in statutory returns filed with Commercial Tax Department and Central Excise Department, it does not take away the right of the Department to examine those purchases with evidences, more particularly when the evidences collected during the course of proceedings clearly proves that those purchases are bogus. Further, in this case, the so called suppliers of goods have themselves stated in their statements that they have issued only bills against payments and returned cash to the assessee after deducting their commission. They have further

stated that they never supplied any goods. Moreover, the AO has called for various details and analyzed their books of accounts and find that their business activity was trading in something else and sales made to the assessee were something else. From the above, it is clear that so called alleged bogus suppliers were never dealt in those goods and hence, question of supplying those materials to the assessee does not arise. Therefore, we are of the considered view that there is no merit in arguments taken by the Id.AR for the assessee that the AO has made additions without bringing on record any evidences to support his findings.

16. Coming back to various case laws relied upon by the assessee. The assessee has relied upon plethora of judicial precedents including decision of Hon'ble High Court of Rajasthan in the case of CIT vs. Pratap Singh Amrosingh Rajendra Singh, [1993] 200 ITR 788. We have gone through case laws cited by the assessee and find that the Hon'ble High Court in the facts of case had held that if the assessee has maintained proper books of accounts and all details are mentioned in such books of account, which were duly supported by vouchers and no defects are pointed out and the books are not rejected, the figures shown therein have

to be followed. Likewise, the assessee has relied upon many other judicial decisions in support of arguments and argued that when the AO has not pointed out any discrepancy in books of account, the purchases recorded from those books of account cannot be treated as bogus in nature. We have gone through various case laws cited by the Id.AR for the assessee and find that those case laws are rendered in different set of facts and hence, are not applicable to facts of present case because in the present case, additions made by the AO is not only based on books of account of the assessee but also on the basis of evidences collected during the course of search where the Department has found bill books and invoices of alleged suppliers in the business premises of the assessee and further the assessee has failed to offer any convincing explanation as to why those bills and invoices are kept in the business premises of the assessee. Secondly, the assessee has failed to offer any explanation as to why standard operating procedure for recording purchases were not followed in respect of purchases from these parties. Thirdly, the assessee has failed to counter the confession statement given by alleged suppliers that they never supplied any goods to the assessee and further they issued only bills against payments and returned cash to the

assessee after deducting their commission. Therefore, we are of the considered view that the facts of the case laws relied upon by the assessee cannot be equated with facts of the present case.

17. However, facts of the present case are squarely covered by the decision of Hon'ble Supreme Court in the case of N.K. Proteins Ltd., vs. DCIT (2017) 292 CTR 354, where the Hon'ble Supreme Court has categorically held that once the Tribunal having come to a categorical finding that purchases from certain parties are bogus, it was not incumbent on it to restrict the disallowances to 25% of such purchases. Further, in the case before Hon'ble Supreme Court, the assessee was indulged in obtaining accommodation entries of bogus purchases and during the course of survey bills and invoices of alleged suppliers were found in business premises of the assessee. The AO has made 100% additions towards alleged purchases on the basis of evidences gathered during the course of search and post-search investigation. The Tribunal has accepted the findings recorded by the AO to treat the purchases as bogus however, restricted additions to the extent of 25% of such bogus purchases. Under those facts, Hon'ble Supreme Court came to the conclusion that once the purchases from certain parties are

treated as bogus then question of making estimation of profit on those purchases does not arise. In this case, facts borne out from record clearly indicate that during the course of search, bills and invoices of those alleged suppliers were found in the business premises of the assessee and assessee was unable to satisfactorily explain reasons for keeping those bills and invoices. The other facts brought out by the AO were also not controverted by the assessee with any evidences. Therefore, we are considered view that facts of the present case was squarely covered by the decision of the Hon'ble Supreme Court and hence, by respectfully following decision of the Hon'ble Supreme Court in the case of N.K. Proteins Ltd., *supra*, we are of the considered view that there is no error in the findings recorded by the Id.CIT(A) to confirm additions made by the AO towards alleged bogus purchases from five parties and hence, we are inclined to uphold the findings of the Id.CIT(A) and reject ground taken by the assessee for assessment years 2011-12 to 2013-14.

18. The next issue that came up for our consideration from assessee appeal is disallowance of warranty obligation. The facts with regard to impugned dispute are that Assessee Company

provided provisions for warranty and such provision for warranty was estimated on the basis of past experience. The AO has disallowed provision for warranty on the ground that it is unascertained liability and contingent in nature and hence, cannot be allowed u/s.37 of the Act. It was contention of the assessee before the AO that provision for warranty was made only to earn goodwill and stay in business and further the assessee company has an obligation to provide warranty to its customers in respect of various contracts and these liability towards warranty, if any, would get crystallized only after the contracts are completed and handed over to the customers.

19. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. As could be seen from the facts brought out by the Id.CIT(A), we find that although the assessee has made huge provision for warranty obligation for every year, but when it comes to utilization of such provision, it had utilized a meager amount for providing after sales warranty to its customers. Further, the Id.CIT(A) has reproduced a chart explaining the amount of turnover, provision made for warranty obligation and amount

utilized for providing warranty and from the chart we find that the assessee has made provision for huge amount and has reversed such provision in the subsequent years without utilization of amount for providing warranty obligation. From the above, it is very clear that provision made in the books of account for warranty obligation is not on the basis of systematic estimation of liability which was based on past experience and future obligation. Further, it is common in business for providing warranty after sales service, however such provision is required to be made on the basis of past experience and future obligation and further such estimation should be scientific and not adhoc. In this case, on the basis of evidences filed by the assessee, the Id.CIT(A) has recorded categorical finding that provision made for warranty obligation is neither based on past experience or scientific but adhoc, because the assessee has reversed provision made in the subsequent year without utilizing hardly any amount for the purpose of providing warranty. Further, warranty provision is normal in the cases of equipment suppliers and product manufacturers. The assessee in the present case is a contractor for power installations. Although, the assessee supplies several power related equipments but such equipments were sourced from various manufacturers and it is

obvious that said manufacturers and suppliers will provide warranty obligation. Since, the assessee is not a manufacturer of any equipment and assessee is only a contractor who executes civil, electrical and mechanical works, requirement for making provision for warranty is very minimal and this fact is strengthened by the fact that although the assessee has made huge provisions year on year but when it comes to utilization, it has utilized a meager amount which is not even 5 to 10% of provisions made in the books of account. Further, if you analyze the provision made right from assessment year 2008-09 to 2014-15, there is outstanding provision of Rs.25.98 crores in the books of account as against this, for seven years, the assessee has hardly used less than Rs.2 crores for providing warranty obligation. Therefore, we are of the considered view that provision made in the books of account for warranty obligation is unascertained liability and contingent in nature. Once liability is contingent liability and unascertained liability, then same cannot be allowed as deduction u/s.37(1) of the Act.

20. As regards various case laws relied upon by the assessee including decision of Hon'ble Supreme Court in the case of Rotork

Controls India (P) Ltd vs. CIT, (2009) 314 ITR 62, we find that facts of said case is entirely different because the assessee was manufacturer of certain goods and had made provision for warranty in respect of after sales services. Further, provision made by the assessee was utilized for providing warranty to the customers. Under those facts, Hon'ble Supreme Court held that if the facts established show that defect existing in some of the items manufactured and sold then the provision made for warranty in respect of the army of such sophisticated goods is entitled to deduction u/s.37(1) of the Act. In this case, the assessee has neither manufactured equipments nor made provision on the basis of past experience and hence, we are of the considered view that there is no error in the findings recorded by the Id.CIT(A) to confirm additions made towards disallowance of provision made for warranty obligation and hence, we are inclined to uphold the findings of the Id.CIT(A) and reject ground taken by the assessee.

21. The next issue that came up for our consideration is addition towards disallowance of interest on advances to subsidiaries. The facts with regard to impugned dispute are that the assessee had given loans and advances to various subsidiaries

without charging any interest. It was further noticed that the assessee has borrowed huge loans and advances and paid interest at the rate of 11% pa. Therefore, the AO was of the opinion that the assessee has diverted interest bearing funds to subsidiaries for non-business purposes and hence, worked out interest at the rate of 11% pa on outstanding balance of loans and advances and made addition u/s.40A(2)(a) of the Act. It was the contention of the assessee before the AO that it has given loans and advances to subsidiaries out of its own funds and no interest bearing funds has been used and hence, question of disallowance of interest does not arise. The assessee further contented that it has given loans and advances to subsidiaries out of commercial expediency and hence, no interest could be disallowed u/s.40A(2)(a) of the Act. In this regard, relied upon decision of the Hon'ble Supreme Court in the case of S.A. Builders Ltd., vs. CIT, (2007) 158 Taxman 74 (SC).

22. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We have carefully considered case laws relied upon by the assessee. We find that the Id.CIT(A) had recorded finding of fact that the issue has been covered against the assessee by the

decision of the ITAT in assessee's own case for earlier year, where the Tribunal has confirmed additions made by the AO towards disallowance of interest. We further noted that although assessee claims that it has given advances to subsidiaries out of commercial expediency but failed to provide any evidence to prove that what is commercial advantage derived by the assessee from its subsidiaries. We further noted that out of three advances given to subsidiaries, the assessee has failed to file evidences in any one case to prove that it has derived some commercial benefit. No doubt, advances given to subsidiaries are out of scope of disallowance of interest but it is for the assessee to prove beyond doubt that said advances are given out to commercial expediency. In this case, the assessee neither produced any detail to prove commercial expediency nor proved that said advances were given out of own funds. Therefore, we are of the considered view that there is no error in the findings recorded by the Id.CIT(A) to confirm disallowance of interest. Hence, we are inclined to uphold the findings of the Id.CIT(A) and reject ground taken by the assessee.

23. In the result, appeals filed by the assessee for assessment years 2011-12 to 2014-15 are dismissed.

ITA Nos.1510 to 1512/Chny/2018 and CO Nos.97 to 99/Chny/2018

24. The Revenue has raised common grounds of appeal for all assessment years. Therefore, for the sake of brevity, grounds of appeal filed for assessment year 2011-12 are reproduced as under:-

“1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The ld.CIT(A) erred in deleting the addition of Rs.71,97,83,480/- made by the Assessing Officer (Assessing Officer) on account of bogus purchases through bill trading indulged by M/s. BGR Energy Systems Ltd., in the assessment order passed u/s.143(3) r.w.s. 147 of the IT Act for A.Y.2011-12 in the assessee's case.

2.1 The ld.CIT(A) erred in not appreciating the findings of the AO in the assessment order passed u/s.143(3) of the IT Act for A.Y. 2011-12 in the assessee's case, that M/s. BGR Energy Systems Ltd., in which the deceased assessee Late B.G. Raghupathy was the chief promoter and chairman till his death in July 2013, had indulged in the bogus purchases through Bill-trading from the five vendors at the investigation of the assessee, who by default, was the principal beneficiary of the kick backs received through bogus purchases.

3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.”

25. The brief facts of the case are that the assessee was founder of M/s. BGR Energy Systems Ltd. He demised on July, 2013. The assessee has filed his return of income for the assessment years 2011-12, 2012-13 and 2013-14 declaring total income of Rs.1,03,62,07,245/, Rs.60,31,87,417/- and Rs.35,88,29,310/-. A search was conducted u/s.132 of the Act, in the case of M/s. BGR Energy Systems Ltd on 18.02.2014. The assessee being Director of M/s. BGR Energy Systems Ltd., the residential premises of the assessee was also covered. During the course of search, it was noticed that M/s. BGR Energy Systems Ltd., was indulged in obtaining bogus purchase bills from various bill traders. The assessment in the case of M/s. BGRESL was completed u/s.143(3) r.w.s. 153A of the Act, and made additions to bogus purchases made from five alleged bill traders. The AO has made additions towards similar amounts in the hands of the assessee on the ground that the assessee was ultimate beneficiary of money siphoned out from the company. The assessee carried the matter in appeal before the Id.CIT(A) and contented that when

additions were made for total purchases in the hands of M/s. BGR Energy Systems Ltd., similar additions cannot be made in his name because it amount to double addition. The Id.CIT(A) for the reasons recorded in his appellate order has deleted additions made in the hands of the assessee by holding that when additions were made in the hands of M/s. BGR Energy Systems Ltd., additions made in the hands of assessee become infructuous and hence deleted additions made by the AO towards alleged bogus purchase for all three assessment years. Aggrieved by the CIT(A) order, Revenue is in appeal before us.

26. The Id.DR submitted that the Id.CIT(A) has erred in deleting addition towards alleged bogus purchases made in the hands of the assessee by holding that when additions were made for similar amounts in the name of another assessee, no additions can be made in the hands of the assessee because it tantamount to double addition without appreciating the fact that the assessee was the ultimate beneficiary of amount siphoned out from the company by booking bogus purchases.

27. The Id.AR for the assessee on the other hand strongly supporting order of the Id.CIT(A) submitted that once addition was made in the name of another assessee, no addition can be made in the name of the assessee for similar amount because it amounts to double addition.

28. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that the AO has made additions towards alleged bogus purchases made from five parties in the hands of M/s. BGR Energy Systems Ltd. We, further, noted that the AO has once again made similar addition in the hands of the assessee without assigning any reasons. Therefore, we are of the considered view that once addition was made towards alleged bogus purchases in the hands of M/s. BGR Energy Systems Ltd., no additions can be made to similar amounts in the hands of the assessee because it amounts to double addition. The Id.CIT(A) after considering relevant facts has rightly deleted additions made by the AO and hence, we are inclined to uphold findings of the Id.CIT(A) and reject ground taken by the Revenue for all Assessment years.

29. The next issue that came up for our consideration from assessment year 2013-14 is addition of Rs.1,88,65,900/- towards cash found during the course of search. We find that the AO has made addition towards unaccounted cash of Rs.1,88,65,900/- found during the course of search in the hands of Smt. Sasikala Raghupathy and at the same time, a similar addition has been made in the hands of the assessee. The Id.CIT(A) after considering relevant facts has rightly held that once addition was made in hands of Smt. Sasikala Raghupathy, no addition can be made in hands of the assessee for cash found during the course of search because it amounts to double addition. The Revenue has failed to controvert the finding of fact recorded by the Id.CIT(A) is neither erroneous nor incorrect. Therefore, we are of the considered view that there is no error in the findings recorded by the Id.CIT(A) to delete addition made towards unaccounted cash found during the course of search in the hands of the assessee and hence, we are inclined to uphold the findings of the Id.CIT(A) and reject ground taken by the assessee.

30. The next issue that came up for our consideration for assessment year 2013-14 is addition of Rs.15,00,000/- found

during the course of search in the bank locker of Shri V.R. Mahadevan. Smt. Sasikala Raghupathy has offered a sum of Rs.15,00,000/- representing cash found during the course of search in the locker of Shri Mahadeven has her income. The Id.CIT(A) after considering the fact that said amount was subjected to tax in the hands of Smt. Sasikala Raghupathy has rejected additions made by the AO in the hands of the assessee. Therefore, we are of the considered view that there is no error in the findings recorded by the Id.CIT(A) to delete additions made towards cash found in the bank locker of Shri Mahadeven and offered to tax in the hands of Smt. Sasikala Raghupathy and hence, we are inclined to uphold findings of Id.CIT(A) and reject ground taken by the Revenue.

31. The assessee has filed cross objections in support of findings of Id.CIT(A). Since, we have dismissed appeals filed by the Revenue for all assessment years, cross objections filed by the assessee in support of order of Id.CIT(A) becomes infructuous. Hence, cross objections filed by the assessee for all assessment years are dismissed as infructuous.

32. In the result, appeals filed by the Revenue and cross objections filed by the assessee for all assessment years are dismissed.

33. As a result, appeals filed by the assessee in ITA Nos.23,24,25 & 116/Chny/2018, appeals filed by the Revenue in ITA Nos.1510, 1511 & 1512/Chny/2018 and cross objections filed by the assessee in CO Nos.97,98 & 99/Chny/2018 are dismissed.

Order pronounced in the court on 23rd June, 2021 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)
(Duvvuru RL Reddy)

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)
(G. Manjunatha)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 23rd June, 2021.

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- | | | |
|------------------------|-------------------------|------------------------------|
| 1. निर्धारिती/Assessee | 2. राजस्व/Revenue | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |