

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'जी', मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**MUMBAI BENCHES, 'G' MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and  
Shri Manoj Kumar Aggarwal, Accountant Member**

**ITA No.5054/Mum/2016  
Assessment Year: 2009-10**

M/s Vaishali Pharma Pvt. Ltd. 706, 709, 'A' Wing, Aravali Business Centre, R.C. Patel Road, Borivali (W), Mumbai-400092	<b>बनाम/</b> Vs.	DCIT-13(3)(2), Room No.229, Aayakar Bhawan, M.K. Road, Mumbai-400020
(निर्धारिती / Assessee)		(राजस्व / Revenue)
<b>PAN. No. AACCV7258G</b>		

निर्धारिती की ओर से / Assessee by	Miss Keyuri Desai
राजस्व की ओर से / Revenue by	Miss Anupama Singla-DR

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>24/01/2017</b>
<b>आदेश की तारीख / Date of Order:</b>	<b>31/01/2017</b>

**आदेश / O R D E R**

Per Joginder Singh(Judicial Member)

The assessee is aggrieved by the impugned order dated 23/05/2016 of the Ld. First Appellate Authority, Mumbai. The only ground raised in the present appeal pertains to upholding the disallowance made by the Assessing Officer of Rs.62,582/- at the rate of 12.5% of the bogus purchases of Rs.500,656/-.

2. During hearing of this appeal, Miss. Keyuri Desai, ld. counsel for the assessee, contended that while coming to a particular conclusion, the Ld. Commissioner of Income Tax (Appeal) did not appreciate the fact that the purchases cannot be termed as bogus because the supplier was listed as Hawala Dealers by the VAT Authorities and further the assessee has no powers to catch them and to produce before the Assessing Officer for cross examination or confirmation. It was also asserted that the ld. Assessing Officer has same powers which are vested in court under the code of civil procedure 1908 enforcing the attendance of any person as per section 131 of the Act. Alternatively, it was contended that the adoption of disallowance at the rate of 12.5% is highly excessive. On the other hand, Miss. Anupama Singla, ld. DR, defended the addition by supporting the impugned order.

2.1. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee declared income of Rs.32,55,720/- in its return filed on 29/09/2009, which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter the Act) on 09/02/2011. Subsequently, the case of the assessee was selected for scrutiny and order u/s 143(3) of the Act was passed on 30/11/2011 assessing the total income at Rs.36,41,630/-. While doing so, on the basis of information received, the name of M/s Vaishali Pharma P. Ltd., from whom the assessee made transactions, was found to be indulged in Hawala Transactions by issuing bogus purchases, bills, without actual delivery of goods or material. As per the Department, the assessee claimed excess expenses of Rs.500656/- on the basis of bogus bills by showing the purchases from these two parties namely Ajanta Enterprises and Daksha Enterprises. During Assessment proceedings, the assessee was asked to submit the details of transaction entered into with these parties. These parties, as per the Revenue, were not traceable, therefore, the Ld. Assessing Officer deemed it fit to disallow 12.5% of the value of transaction entered into with the aforesaid parties, which comes to Rs.62,582/- (12.5% of Rs.5,00,656/-) and added to the income of the assessee.

2.2. On appeal, before the Ld. Commissioner of Income Tax (Appeal), the stand taken in the assessment order was affirmed and the disallowance made by the

Assessing Officer on account of impugned bogus purchases was affirmed. The assessee is in appeal before this Tribunal.

2.3. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsel, if kept in juxtaposition and analyzed, considering the totality of facts and circumstances narrated before us, we direct the Ld. Assessing Officer to make the addition by making the disallowance at the rate of 10% in place of 12.5% sustained by the Ld. Commissioner of Income Tax (Appeal), thus, this appeal of the assessee is partly allowed. We are making it clear that our above conclusion is based upon the peculiar facts of the present appeal and may not be quoted for future references.

Finally, the appeal of the assessee is partly allowed.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 24/01/2017.

**Sd/-**

(Manoj Kumar Aggarwal)  
लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**

(Joginder Singh)  
न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/01/2017

*Shekhar, P.S.* नि.स.

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**