

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "एच" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM

ITA NO.4726/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2011-12)

Asstt. Commissioner of Income Tax-32(1), Room No.202, 2 nd fl. Pratyakshakar Bhavan, Bandra-Kurla Complex, Bandra (E), Mumbai-400051.	<u>बनाम/</u> Vs.	Shri Hiralal K Patel, 1 st floor, Heera House, Daulat Nagar, Borivali East, Mumbai-400051
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./PAN : AACPP222K		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri M C Omi Ningshan
प्रत्यर्थी की ओर से/Revenue by	:	Shri Devang Kishor Shah

सुनवाई की तारीख /Date of Hearing	:	11.5.2017
घोषणा की तारीख /Date of Pronouncement	:	7. 6.2017

आदेश / O R D E R

PER RAJESH KUMAR, A. M:

By way of this appeal the assessee is challenging the order of Id.CIT(A)-44, Mumbai dated 5.6.2015 for the assessment year 2011-12.

2. Grounds of appeal taken by the assessee are as under:

1. On the facts and in the circumstances of the case, and in law, the Ld.CIT(A), erred in restricting addition of unexplained expenditure to Rs.5,96, 120/ - @ 8% of Rs.74,51,506/-) u/s.69C of the LT. Act on account of bogus purchases as against the addition of Rs.74,51,506/- made by the AO without appreciating that the

assessee has not produced any cogent evidence to substantiate the fact that it had taken actual delivery of goods purchased from this party and the assessee has also failed to produce the purchase parties before the AO.

2. On the facts and in the circumstances of the case, and in law, the Ld.CIT(A) erred in deleting the disallowance made by the AO overlooking the statement given by the party and explicit finding of the investigation carried out by the Sales Tax Department and corroborated by the enquiries of the AO.

3. The appellant prays that the order of the Ld.CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.”

3. The facts of the case in brief are that during the course of assessment proceedings, the AO noticed that the assessee has made total purchases of Rs.6,42,02,465/-. The assessee was called upon by the AO to furnish the party-wise details of purchases along with other details as to VAT etc which were duly filed by the assessee. From the details supplied by the assessee, the AO found that the same suppliers supplying goods to the assessee whose names were appearing in the list of hawala dealers as published on the website of Sales Tax Department, Government of Maharashtra. From the 9 parties, the assessee has made purchases of Rs.74,51,506/-. The notice sent by the AO to these parties u/s 133(6) to verify the genuineness of purchases were returned unserved with the postal remarks. The AO issued show cause notice dated 17.2.2014 to the assessee to show cause as to why these purchases should not be added to the total income of the assessee which was replied by the assessee vide letter dated 28.2.2014 without submitting any details and copies of

purchase bills, statement of bank and transaction thereof. Ultimately, the assessment was framed vide order dated 7.3.2014 passed under section 143(3) of the Income Tax Act, 1961 by assessing the total income at Rs.1,02,65,880/- after making addition of Rs.74,51,506/- u/s 69C of the towards bogus purchases. During the appellate proceedings the Id.CIT(A) partly allowed the appeal of the assessee by sustaining the addition towards GP at the rate of 8% of the total bogus purchases of Rs.74,51,506/- which worked out to Rs.5,96,120/- and thus allowed the relief of Rs.68,55,386/- after considering the various contentions and submissions as raised by the assessee in incorporated in the appellate order.

4. We have carefully considered the rival contentions and perused the material placed before us including the impugned orders of authorities below. We find that the FAA after considering the detailed submissions and examination of records of purchases made by the assessee in respect of these parties, partly upheld the addition. Thus, the claim of the assessee sustained in part towards the GP on such purchases at the rate of 8% which comes to Rs.5,96,120/-. We also find from the record before us that earlier GP of the assessee ranges between 8 to 9% in the preceding three assessment years and in succeeding year. Further, the assessee has produced bills and vouchers including the quantitative details of purchases, delivery challans, bank statements showing the names of these parties. Therefore in view of these facts and circumstances, we are

in agreement with the conclusion drawn by the Id.CIT(A) by applying GP rate on the total purchases. Moreover, the AO has not disputed the sales of assessee. Accordingly, we dismiss the appeal of the revenue by upholding the order of CIT(A).

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

Order pronounced in the open court on 7th June, 2017.

Sd

sd

(Mahavir Singh)

(Rajesh Kumar)

न्यायिक सदस्य / Judicial Member

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 7.6.2017

SRL,Sr.PS

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

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

True copy

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai