

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
I.T.A. No.213/M/2015 (Assessment Year: **2009-2010**)

ACIT, CC-31(3), C-11, 7 th Floor, Pratyakshakar Bhavan, BKC, Bandra (E), Mumbai – 400 051.	बनाम/ Vs.	M/s. S.D. Industries, 2/10, Singh Industrial Estate, Ram Mandir Road, Goregaon (W), Mumbai – 400 104.
स्थायी लेखा सं./PAN : AALFS5326C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Ajay, DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Sanjay Kapadia

सुनवाई की तारीख / Date of Hearing : 27.06.2016

घोषणा की तारीख /Date of Pronouncement : 25.08.2016

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal filed by the Revenue on 9.1.2015 is against the order of the CIT (A)-34, Mumbai dated 15.10.2014 for the assessment year 2009-2010. In this appeal, Revenue raised the following grounds which read as under:-

"1. On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in deleting the addition of Rs. 34,88,069/- made on account of non-genuine purchases from 8 parties and directing the AO to accept the GP @ 20% ignoring the fact that some of these parties are included in the list of suspicious and / or hawala dealers provided by the sales tax department.

2. On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in deleting the addition of Rs. 34,88,069/- made on account of purchases made from 8 parties and directing the AO to accept the GP @ 20% as the income escaped from tax ignoring the fact that the sales tax commissioner has recorded the statement of these alleged parties by way of affidavit that these dealers are engaged in the business of issue of bills without physical deliver of materials.

3. On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in deleting the addition of Rs. 34,88,069/- made on account of purchases made from 8 parties and directing the AO to accept the GP @ 20% ignoring the fact that notices issued u/s 133(6) of the Act have been received back unserved.

4. On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in deleting the addition of Rs. 34,88,069/- made on account of purchases made from 8 parties and directing the AO to accept the GP @ 20% ignoring the fact that the onus lies on the assessee to produce the concerned parties which assessee failed to do."

2. Briefly stated relevant facts of the case are that the assessee is engaged in the business of 'manufacturing and labour job of engineering goods'. Assessee filed the return of income declaring the total income of Rs. 7,55,840/-. Assessment was completed u/s 143(3) read with section 147 of the Act and the assessed income was determined at Rs. 42,43,90/- which includes addition of Rs. 34,88,069/- on account of 'bogus purchases'. Aggrieved with the said decision of the AO, assessee carried the matter in appeal before the first appellate authority.

3. During the proceedings before the first appellate authority, after considering the submissions of the assessee, CIT (A) partly allowed the assessee's appeal. Aggrieved with the said decision of the CIT (A), Revenue is in appeal before the Tribunal by raising the above mentioned grounds.

4. At the outset, Ld Representatives of both the parties agreed to the point that the issue involved in the Revenue's appeal is against the relief granted by the CIT (A) on the addition involving the accommodation entries *qua* the purchases from the suppliers, whose names are listed by the Sales Tax Department in their website ie www.mahavat.gov.in as Sales Tax defaulters. They also fairly mentioned that the Tribunal is consistently taking a view on the issue that by not confirming such bogus addition supplied by such parties rather the Tribunal is consistently resorting to confirming the additions to GP of the concerned assessee's. In this regard they brought our attention to the decision of the Tribunal in the case of Shri Pratap U Purohit vide ITA No.5296/M/2013 (AY 2010-2011), dated 10.02.2016. Further, they mentioned that if the said approach of confirming the GP based additions on such bogus purchases involving such tainted suppliers, whose names are appeared in the said website of the Sales Tax Department, the instant appeal filed by the Revenue should be dismissed upholding the order of the CIT (A).

5. On hearing both the parties and on perusal of the orders of the Revenue Authorities in general and the contents of para 2.3 in particular, I find the same are relevant in this regard. Considering the significance of the said para for the sake of completeness of this order, relevant portion from the said para is extracted as under:-

"2.3.
.....

Further, while dealing with the assessee's own case for AY 2010-2011 on identical issue I have hold that average GP of past three years ie @ 20% of the bogus purchases after giving credit for the GP already offered and balance as escaped income for the purposes of taxation vide my order in appeal no. CIT(A)-34/IT-96/13-14. Therefore, following the same I hold that to judge such inflated purchase / cost estimate GP at 20% considering the average GP of past 3 years and accordingly direct the AO to accept the GP @ 20% of the bogus purchases and give credit for the GP already offered on such purchase and tax the balance as escaped income for the purposes of taxation & delete the balance addition."

6. Considering the above, I am of the opinion that the decision taken by the CIT (A) is fair and reasonable and it does not call for any interference. Accordingly, grounds raised by the Revenue are dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 25th August, 2016.

Sd/-

(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 25.8.2016

व.नि.स./ OKK, 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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai