

IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI  
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER  
AND SHRI PAWAN SIGH, JUDICIAL MEMBER**  
I.T.A. No.4939/M/2016 (Assessment Year: **2009-2010**)

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| ITO-32(1)(1),<br>R.No.201, C-11, 2 <sup>nd</sup> Floor,<br>Pratyakshakar Bhavan, BKC,<br>Bandra (E), Mumbai – 400 051. | बनाम/<br>Vs. | M/s. Abhay Automotive<br>Company,<br>B/402, Sumer Nagar, Building<br>No.3, S.V. Road, Borivali (W),<br>Mumbai-400092. |
| स्थायी लेखा सं./PAN : AAJFA3745K   |              |   |
| (अपीलार्थी /Appellant)   | ..           | (प्रत्यर्थी / Respondent)   |

|                                    |   |                            |
|------------------------------------|---|----------------------------|
| अपीलार्थी की ओर से / Appellant by  | : | Shri Saurabh Kumar Rai, DR |
| प्रत्यर्थी की ओर से/ Respondent by | : | None                       |

सुनवाई की तारीख / Date of Hearing : 23.02.2017

घोषणा की तारीख /Date of Pronouncement : 17.03.2017

**आदेश / O R D E R**

**PER D. KARUNAKARA RAO, AM:**

This appeal filed by the Revenue on 01.08.2016 is against the order of the CIT (A)-44, Mumbai dated 25.5.2016 for the assessment year 2009-2010. In this appeal, Revenue raised the following grounds and the same read as under:-

- "1. On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in restricting addition to Rs. 6,03,737/- (@ 13.76% of Rs. 43,87,622/-) u/s 69C of the Act on account of bogus purchases as against addition of Rs. 43,87,622/- made by the AO without appreciating that the assessee has not produced any cogent evidence to substantiate the fact that he had taken actual delivery of goods purchased from the parties and that the notices u/s 133(6) issued to the parties from whom alleged bills were received were returned undelivered by the postal authorities with the remark 'not available at this address' 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 relying upon judgment in the case of CIT vs. Nikunj Enterprises (372 ITR 619) and Saraswathi Oil Traders vs. CIT (254 ITR 259) (SC) without appreciating that the facts involved in the appellant's case are different from the facts of the above case laws."*

3. Briefly stated relevant facts of the case are that the assessee is engaged in the business of 'resale of Motor, Truck and Auto parts and accessories'. Assessee filed the return of income declaring the total income of Rs. 1,60,016/-. Assessment was completed u/s 143(3) r.w.s 147 of the Act and the assessed income was determined at Rs. 45,47,642/-. In the assessment, AO made addition of

Rs.43,87,622/- on account of 'bogus purchases' u/s 69C of the Act. During the assessment proceedings, AO noticed that during the year assessee made purchases from certain parties, whose names are appearing in the whose names are listed by the Sales Tax Department in their website ie [www.mahavat.gov.in](http://www.mahavat.gov.in) as Sales Tax defaulters. All such purchases involving the suppliers enlisted the said Sales Tax Department website were added by the AO u/s 69C of the Act in the AY under consideration. Matter travelled to the first appellate authority.

4. During the proceedings before the first appellate authority, CIT (A) relied on the judgment of the Hon'ble jurisdictional High Court in the case of **Nickunj Eximp Enterprises Pvt Ltd** vs. ACIT vide Writ petition No. 2860 of 2012, dated 18<sup>th</sup> June, 2014 and disproved the addition made by the AO u/s 69C of the Act. Further, relying on the ratio laid down by the Hon'ble Gujarat High Court in the case of **CIT vs. Simit P. Sheth**, ITA No. 553 of 2012, dated 16.1.2013, CIT (A) restricted the addition to 13.76% of such alleged bogus purchases of Rs. 43,87,622/-. Aggrieved with the relief granted by the CIT (A), Revenue is in appeal before the Tribunal by raising the above grounds.

5. During the proceedings before us, none appeared to represent the assessee's case. Considering the covered nature of the issues, we proceed to adjudicate this appeal on merits with the help of the Ld DR for the Revenue.

6. On the other hand, Ld DR for the Revenue dutifully relied on the order of the AO and the view taken by him.

7. On hearing both the parties and on perusal of the orders of the Revenue Authorities in general and the contents of para 4.7 of the CIT (A)'s order in particular, we 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:-

*"4.7.....Therefore, after considering the totality of facts and after following the ratio of Saraswathi Oil Traders vs. CIT (SC) cited supra, I am of the opinion that it is the profit element on the total component in dispute which needs to be added to the income of the appellant. The total amount which is being treated as bogus by the AO is rs. 43,87,622/-. The appellant has shown a gross profit rate of 13.76%. Thus, 13.76% of Rs. 43,87,622/- which is Rs. 6,03,737/- is accordingly confirmed out of an addition of Rs. 43,87,622/- and the balance is deleted. Grounds of appeal nos. 1, 2 and 3 are therefore partly allowed."*

8. Considering the above, we are of the opinion that the before granting relief to the assessee, CIT (A) rightly followed the precedents on the issue. Therefore, we are of the considered 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.

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

Order pronounced in the open court on 17<sup>th</sup> March, 2017.

Sd/-

**(PAWAN SINGH)**

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 17.03.2017

व.नि.स./ OKK, Sr. PS

Sd/-

**(D. KARUNAKARA RAO)**

ACCOUNTANT MEMBER

**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.

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आदेशानुसार/ BY ORDER,

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

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**