

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'SMC', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI
Before Shri Shamim Yahya, Accountant Member

ITA No.1336/Mum/2017 : Asst.Year 2009-2010

Shri Sunil Kumar Vorani 3 Lahana Niwas, Laxmi Narayan Lane Matunga (CR) Mumbai – 400 019. PAN : AACPV4969K.	बनाम/ Vs.	The Income Tax Officer Ward 20(3)(4) Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by : Ms.Ruchi M.Rathod
प्रत्यर्थी की ओर से /Respondent by : Shri B.Satyanarayana Raju (Sr.DR)

सुनवाई की तारीख / Date of Hearing : 18.05.2017	घोषणा की तारीख / Date of Pronouncement : 06.07.2017
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आदेश / ORDER

This is an appeal by the assessee wherein the assessee is aggrieved by the order of the learned CIT(A) wherein 3.34% disallowance on account of bogus purchase amounting to Rs.9,70,076 was confirmed.

2. Brief facts of the case are as under:-

2.1 The assessee is engaged in the Business of trading Iron, Steel, Hardware, Electrical, Chemical- General Merchant and Commission Agent. The AO received information from the Investigation Wing that the appellant has entered into bogus purchase transactions with 22 parties totaling to Rs. 2,90,44,200/-. The assessment was reopened by the A.O. after recording reasons for reopening and notice u/s. 148 was issued which was duly served on the assessee. During the assessment proceedings, the A.O. issued notice

u/s 142(1) to the appellant requiring him to produce details of purchases and supporting evidences made from these 22 parties. The appellant is alleged to have made bogus purchases from 22 parties viz, M/s. Om Corporation, Rs.3,23,311/-, M/s. Balaji Trading Rs.9,87,781/-, National Trading Co. Rs.13,13,836/- M/s. 13,62,947, Deepali Enterprises Rs.40,93,136/-, Diddhivinayak Trading Company Rs. 50,82,072/-, Renuka Sales Corporation Rs. 13,44,125/-, Rckha Trading Co. Rs. 23,45,359/-; Leo Impex Rs. 4,01,335/-, Daksha Enterprises Rs. 4.69.498/-, Amar Enterprises Rs.6,56,975/-, Harsh Corporation Rs.1,80,910/-, M.R. Corporation Rs.20,82,588/-, S.S. Enterprises Rs.12,19,633/-, Big Trade Agency Rs.16,81,620/-, Khushi Enterprises Rs. 1,62,706/-, Samarlh Trading Company Rs. 1,87,829/-, R.J.Corporation Rs. 4,05.057/-, Mahavir Enterprises Rs.12,09,865/-, Swaslik Enterprises Rs.12,09,865/- Shivam Trading Co. Rs. 12,81,458/- totaling to Rs 2,90,44.200/-. To verify the genuineness of transaction the A.O. issued notice u/s 133(6) to all parties which was returned back as unserved by the postal authorities. The assessee remain failed to produce the parties before the A.O. to verify claim of purchase made from them. The assessee produced only the copy of invoices and ledger accounts along with proof of payment made to these parties through account payee cheques. No document such as delivery challans, lorry receipts, transportation details etc. The A.O. assumed that the assessee has purchased goods from some other parties by way of cash and has introduce theses in the regular stock of the assessee by obtaining bills/accommodation bills from these parties. Keeping view in mind the decision of various courts mentioned in assessment order, the A.O. made

addition @12.5% on total alleged purchase amounting Rs 2,90,44,200/- which resulted in an addition of Rs 36,30,525/-.

2.2 Upon assessee's appeal, the learned CIT(A) confirmed the action of the Assessing Officer insofar as the finding that the purchases were bogus was concerned. However, he disallowed only 3.34% of the bogus purchases. Thus disallowance of Rs.9,70,076 was confirmed against the total addition of Rs.36,30,525.

2.3 Against this order, assessee has filed appeal before the ITAT.

3. I have heard both the learned Counsel and perused the records.

4. Up on careful consideration of the facts of the case, I find that overwhelming evidence have been referred by the authorities below that the impugned purchases are bogus. There is no evidence of the actual movement of the goods under dispute. In these circumstances learned Departmental Representative has referred to Hon'ble Gujarat High Court decision in the case of Tax Appeal No 240 of 2003 in the case of N K Industries vs Dy CIT , order dated 20.06.2016, wherein 100% of the bogus purchases will held to be added in the hands of the assessee and tribunals restriction of the addition to 25% of the bogus purchases was set aside. The Special Leave Petition against this order along with others has been dismissed by the Hon'ble Apex Court vide order dated 16.1. 2017.

5. However, despite the above precedence, I find that this is not an appeal by the Revenue and assessee cannot be denied the benefit already

granted by the learned CIT(A). Hence I uphold the order of the learned CIT(A).

6. In the result, this appeal by the assessee stands dismissed.

Order pronounced on this 06th day of July, 2017.

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 06th July, 2017.
Devdas*

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

1. अपीलार्थी / The Appellant
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.

True copy

आदेशानुसार/ BY ORDER,

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