

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.7430/Mum/2016 : Asst.Year 2010-2011

Smt.Taradevi N.Kanungo Madhav Bhuvan Room No.4, 2 nd Floor 138/152 Nanubhai Desai Road Mumbai – 400 004. PAN : AARPK9864B.	बनाम/ Vs.	The Income Tax Officer Ward 18(3)(4) Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by : Shri Adityakumar Sharma

प्रत्यर्थी की ओर से /Respondent by : Shri B.Satyanarayana Raju (Sr.DR)

सुनवाई की तारीख / Date of Hearing : 17.05.2017	घोषणा की तारीख / Date of Pronouncement : 03.07.2017
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आदेश / ORDER

This appeal by the assessee is directed against the order of CIT(A) dated 06.09.2016 and pertains to assessment year 2010-2011.

2. The grounds of appeal read as under:-

“(1) On the facts and in the circumstances of the case and in law the order passed by the learned CIT(A) upholding the validity of the assessment order and confirming various additions is arbitrary unjustified and bad in law.

(2) On the facts and in the circumstances of the case and in law the learned CIT(A) erred in approving reopening of the assessment.

(3) On the facts and in the circumstances of the case and in law the learned CIT(A) was not justified in approving the rejection of books of accounts by the learned Assessing officer.

(4) *On the facts and in the circumstances of the case and in law the learned CIT(A) was not justified in confirming the addition of Rs.65,983 made on account of alleged undisclosed purchases .*

(5) *On the facts and in the circumstances of the case and in law the learned CIT(A) erred in confirming the addition of Rs.42,51,024 made in the hands of the assessee by invoking provisions of section 50C.*

(6) *On the facts and in the circumstances of the case and in law the learned C1T(A) erred in not entertaining the alternate plea requesting him to allow deduction under section 54 in case the addition on account of alleged capital gain is sustained .*

(7) *The assessee craves leave to add, delete, alter/modify the above grounds of appeal before or at the time of hearing .”*

3. Brief facts of the case are that the assessee filed her return of income for assessment year 2010-2011 on 27.09.2010 declaring a total income of Rs.2,32,142. The return was processed u/s 143(1) of the Income-tax Act, 1961. Subsequently, the AO received information from the DGIT(Inv.), Mumbai about some hawala operations identified by the sales tax department, Mumbai. The information in possession of the AO is that the assessee has taken accommodation entries for purchases to the tune of RS.2,19,943. Thus, the case was reopened u/s 147 of the I.T.Act.

4. In the assessment order, the Assessing Officer observed that in response to notice u/s 148, the authorized representative of the assessee M/s.S.S.Soni & Co., CAs vide letter dated 16.10.2014, raised certain objections and requested to restore the original order. Meanwhile, this file has been transferred to this charge in the restructuring of the Department.

Due to change of incumbent of an office u/s 129 of the I.T.Act, 1961, notice u/s 143(2) / 142(1), was issued and served upon the assessee. In response to these notices, Shri S.S.Soni, CA, attended and submitted the details called for and the case is discussed with him.

5. Thereafter the Assessing Officer adjudicated the issue. He proceeded to enquire into the issue of bogus purchases and concluded that the assessee's representative vide order sheet entry dated 09.02.2015 has accepted 30% of the bogus purchases as his income for the assessment year 2010-2011. Hence the A.O. made disallowance of Rs.65,983. Thereafter invoking the provisions of section 50C, the A.O. added a sum of Rs.42,51,024 as long term capital gain.

6. Upon assessee's appeal, the learned CIT(A) upheld the action of the Assessing Officer.

7. Against this order, assessee is in appeal before the ITAT. At the outset, the learned Counsel of the assessee submitted that assessee has filed objection for the reopening and Assessing Officer without disposing off the objections, has proceeded to pass assessment order. This he submitted was in violation of Hon'ble Apex Court mandate in the case of GKN Driveshafts (India) Ltd. v. ITO [(2003) 259 ITR 19 (SC)].

8. Per contra, the learned Departmental Representative could not produce relevant documents showing that the Assessing Officer has disposed off the objections.

9. I have heard both the Counsel and perused the records. In my considered opinion, the interest of justice in this case mandates that the issue is remitted to the file of the Assessing Officer to dispose off the objections of the assessee in accordance with the decision of the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd. (supra). Since this issue goes to the root of the matter, the issue is remitted to the file of the Assessing Officer. The Assessing Officer is directed to decide the issue as per law after giving the assessee proper opportunity of being heard.

10. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced on this 03rd day of July, 2017.

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 03rd 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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