

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "बी", मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL BENCH "B" MUMBAI

BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM
श्री महाविर सिंग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष

ITA NO.4168 and 4169/Mum/2015
(निर्धारण वर्ष / Assessment Years: 2009-10 and 2010-11)

Dy.Commissioner of Income Tax -32(2), Room No.308, C-10, 3 rd floor, Pratyakshakar Bhavan, Bandra-Kurla Complex, Bandra (E), Mumbai-400051	<u>बनाम/</u> Vs.	Shri Mafatlal M Shah, 202-C, Vaibhav Jamil Galli, Borivali West, Mumbai-400092
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./PAN : AOCPS6439P		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Revenue by	:	Shri Suman Kumar
प्रत्यर्थी की ओर से/ Assessee by	:	Shri Hitesh Shah
सुनवाई की तारीख /Date of Hearing	:	24.8.2017
घोषणा की तारीख /Date of Pronouncement	:	27.9.2017

आदेश / ORDER

PER RAJESH KUMAR, A. M:

The captioned are appeals by the revenue pertaining to assessment years 2009-10 and 2010-11. The appeals are directed against the order of the CIT(A)-44, Mumbai, dated 24.04.2015 which in turn has arisen from an order passed by the Assessing Officer dated 27.02.2015 under section

143(3) r.w.s.147 of the Act. Since the issue raised in these two appeals are same, for the sake of convenience, these were clubbed together, heard together and are being disposed of by this consolidated order.

2. The sole issue raised by the revenue is against the deletion of additions of Rs.16,57,919/- and Rs.16,63,032/- for the assessment years 2009-10 and 2010-11 respectively against the additions of Rs.46,05,331/- and 46,19,532/- respectively made by the AO at the rate of 12.5% of the bogus purchases.

3. At the outset, the Id.AR submitted before the Bench that in the very same case, the appeals filed by the assessee in ITA Nos.3904 and 3905/Mum/2015 for the assessment years 2009-10 and 2010-11 respectively have already been decided by the Tribunal vide order dated 19.5.2017, therefore, the appeals of the revenue become in fructuous and hence be dismissed.

4. The Id. DR, very fairly agreed to the submissions made by the Id.AR.

5. After hearing the rival parties and considering the submissions, we find that the Co-ordinate Bench of the Tribunal in ITA Nos.3904 and 3905/Mum/2015 for the assessment years 2009-10 and 2010-11 (supra) have already disposed of the appeal of the assessee in the case of assessee by observing and holding as under :

"5. We have heard Ld. Sr. DR and gone through the facts and circumstances of the case. The facts of the case are that the assessee is in the business of contractor of BMC, sub-contractor and repair contractor etc. To carry out the contract work the assessee claimed to have made purchases through account payee cheques and claimed that material purchased has been utilized/ consumed and the items purchased have been paid through banking channel. It was explained that the construction material so purchased by the assessee has been utilized in the execution of civil contracts awarded by the Govt. agencies like MMRDA or BMC. The assessee claimed that the purchase expenses have been corroborated by various evidences and assessee had made purchases from various parties but in absence of proper bills, they could have taken bills from parties which were later on declared by the Sales Tax Department of Maharashtra Govt. as hawala parties / suspicious dealers. The assessee before CIT(A) as well as AO only requested for estimation of profit rate and CIT(A) accordingly estimated the same. We find no infirmity in the order of CIT(A) and hence the same is confirmed. As regards to AY 2010-11, the same are the fact and hence, the order of CIT(A) in that appeal also confirmed"

In view of the above facts, the appeals of the revenue become infructuous and hence dismissed as infructuous.

6. In the result, the appeal of the revenue stand dismissed.

Order pronounced in the open court on 21st Sept, 2017.

Sd

sd

(महाविर सिंग/Mahavir Singh)
न्यायिक सदस्य / Judicial Member

(राजेश कुमार/Rajesh Kumar)
लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :21st Sept.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

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आदेशानुसार/ BY ORDER,

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