

IN THE INCOME TAX APPELLATE TRIBUNAL “K” BENCH, MUMBAI

BEFORE SHRI R.C. SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.2677/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

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| JT. CIT (OSD)-6(2)(1) Room No. 563, 5 th floor, Aayakar Bhavan, M.K. Road, Mumbai Pin:400 020 | बनाम/ Vs. | Cargo Gear Services Pvt. Ltd. Plot No. 10, Opp Sant Janaben Muncipal Market, Godapdev Cross RD No. 1, Off Reay Road Pin:400011 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCC4330K | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| Assessee by: | None | |
| Revenue by: | Shri V. Jenardhanan | |

सुनवाई की तारीख / Date of Hearing: 19.09.2017
घोषणा की तारीख /Date of Pronouncement: 27.09.2017

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 19.01.2016 passed by the Commissioner of Income Tax (Appeals)-12, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2011-12.

2. The revenue has raised the following grounds:-

- “1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs.35,08,658/- being peak of sham purchases made u/s 69C of the Act, by holding that it is addition of bogus purchases u/s 68 of the Act,

thus, not, appreciating that provision of 69C is separate from the provisions, governing business income and being a deeming provision section 69C is applicable irrespective of the addition/estimated under the provision of business income.”

2. *The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the AO be restored.*
3. *The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the AO be restored.*
4. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”*

3. No body appeared on the behalf of the assessee in spite of service of notice nor any adjournment petition was filed therefore the bench decided to dispose the appeal after hearing Ld. Departmental and considering the material placed on record.

4. The brief facts of the case are that the assessee filed its return of income for the A.Y. 2005-06 on 28.09.2011 declaring total income to the tune of Rs.1,52,86,860/-. The return was processed u/s 143(1) of the I.T. Act on 20.01.2012 raising a demand of Rs.6,590/-. The Assessing Officer received a letter from DGIT(Inv.), Mumbai in which it was stated that the assessee was engaged in the bogus purchase activity i.e. taking the accommodation entries from hawala operators. According to this information the assessee has bogus purchases bill from the 3 parties in the A.Y. 2011-12. The claim of the 3 parties are hereby mentioned below.:-

| <i>Sr.No.</i> | <i>Name of the assessee</i> | <i>PAN</i> | <i>Amount of bogus purchase</i> |
|---------------|-----------------------------|------------|---------------------------------|
|---------------|-----------------------------|------------|---------------------------------|

| | | | |
|---|-----------------------------|--------------------|----------------------------|
| 1 | <i>Bhagwati Trading Co.</i> | <i>AABCC4430KI</i> | <i>Rs.33,58,21</i> |
| 2 | <i>Prayan Trading Co.</i> | <i>AAISP6755D</i> | <i>Rs.8,12,276</i> |
| 3 | <i>Vitarag Trading Co.</i> | <i>AAFFV2004C</i> | <i>Rs.7,24,282</i> |
| 4 | <i>Total</i> | | <i>Rs.48,94,769</i> |

5. Thereafter, the statement of the said parties were recorded on oath only their admitted that they were proceeding the bills whereas no actual transaction took place. Thereafter, the case was reopened u/s 147 of the Act was given to the assessee. After getting the reply the credit purchase of the said parties to the tune of Rs.35,08,658/- was disallowed and added to the income of the assessee u/s 69C of the I.T. Act. Thereafter, G.P. addition was also added to the income of the assessee the total income of the assessee to be assessed to the tune of Rs.1,86,93,410/-. Thereafter, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

ISSUE NO.1:-

6. We have heard argument advanced by the Ld. Representative of the department and perused the record. The Ld. Representative of the revenue has argued that the addition u/s 69C of the Act has duly been proved, therefore, the Assessing Officer has rightly added the said amount in the income of the assessee and also assessed the profit @ of

2% upon the said bogus purchase bills but the CIT(A) has wrongly deleted the same therefore, in the said circumstances the finding of the CIT(A) is wrong against law and facts and is liable to be set aside. In view of the argument advanced by the Ld. Representative of the deapartment and perusing the record, we noticed that the case was reopened on the basis of the information received from DGIT(Inv.), Mumbai in which it was conveyed that the assessee was engaged in the bogus purchase activity from 3 parties whose name are hereby mentioned below.:-

| <i>Sr.No.</i> | <i>Name of the assessee</i> | <i>PAN</i> | <i>Amount of bogus purchase</i> |
|---------------|-----------------------------|--------------------|---------------------------------|
| <i>1</i> | <i>Bhagwati Trading Co.</i> | <i>AABCC4430K1</i> | <i>Rs.33,58,21</i> |
| <i>2</i> | <i>Prayan Trading Co.</i> | <i>AAISP6755D</i> | <i>Rs.8,12,276</i> |
| <i>3</i> | <i>Vitarag Trading Co.</i> | <i>AAFFV2004C</i> | <i>Rs.7,24,282</i> |
| <i>4</i> | <i>Total</i> | | <i>Rs.48,94,769</i> |

7. Thereafter, the statements of the said parties were recorded on oath in which they admitted that they were only issuing the bills whereas no actual transaction took place between them. Thereafter the notice was given to the assessee and finding no justifiable reply the AO disallowed the bogus purchase to the tune of Rs.35,08,658/- and the said amount added to the income of the assessee. It is not a case

where the case has not been proved and the matter of controversy has been decided without cogent and convincing evidence on record. The law relied by the CIT(A) speaks that when the profit was estimated then all the expenses should be allowed. In the instant case the purchase of the assessee was found bogus and thereafter the profit was estimated on bogus purchase. Facts are distinguishable. In the said circumstances, we are of the view that interest of justice would be achieved if the GP addition be restricted @ 10% of the bogus purchase. We ordered accordingly and allowed the appeal of the revenue. Accordingly, this issue is decided in favour of the revenue against the assessee.

ISSUE NO. 2 & 3 :-

8. Issue no. 2 & 3 are generally in nature which nowhere required any adjudication.

9. In the result, the appeal of the revenue **is hereby ordered to be allowed.**

Order pronounced in the open court on 27.09.2017.

Sd/-

(R.C. SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 27.09.2017

v.p.singh

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

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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