

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “जे/बी” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “J/B” BENCH, MUMBAI
श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
BEFORE SHRI C.N. PRASAD, JM AND SHRI RAJESH KUMAR, AM

ITA NO.2110/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2011-12)

Asstt. Commissioner of Income Tax-14(2)(2), Room No.432 Aayakar Bhavan, M K Road, Mumbai-400020	<u>बनाम/</u> Vs.	M/s Premier Industrial Corporation Ltd., C-501/506, Kailash Corporate Lounge, Godrej Hiranandani Link road, Vikhroli (W), Mumbai-400079.
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

ITA NO.2201/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s Premier Industrial Corporation Ltd., C-501/506, Kailash Corporate Lounge, Godrej Hiranandani Link road, Vikhroli (W), Mumbai-400079.	<u>बनाम/</u> Vs.	Addl. Commissioner of Income Tax- O/o ACIT-14(2)(2) (Erstwhile charge of DCIT10(2), Room No.433, 4 th floor, Aayakar Bhavan, M K Road, Mumbai-400020
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./ PAN : AAACP3518M		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Revenue by	:	Shri Arju Garodia
प्रत्यर्थी की ओर से/ Assessee by	:	Shri Ajay Singh
सुनवाई की तारीख /Date of Hearing	:	27.9.2017
घोषणा की तारीख /Date of Pronouncement	:	29.9.2017

आदेश / ORDER**PER RAJESH KUMAR, A. M:**

These are cross-appeals pertaining to assessment year 2011-12 and are directed against the order of the CIT(A)-22, Mumbai, dated 23.1.2015 which in turn has arisen from an order passed by the Assessing Officer dated 19.3.2014 under section 143(3) of the Income Tax Act, 1961.

ITA NO.2201/Mum/2015

2. The sole issue raised by the assessee is against the confirmation of addition to the extent of 25% of alleged purchases by the Id. CIT(A) by ignoring the facts that the assessee has declared the profit of 3% during the year as against the addition of 100% of the purchases by the AO.

3. Facts of the case are the assessee filed return of income on 30.9.2011 declaring total income of Rs.7,28,99,590/-. The return was processed u/s 143(1) of the Act. Thereafter the case was selected for scrutiny and the statutory notices u/s 143(2) and 142(1) were issued and served upon the assessee. The assessee is engaged in the business of manufacturing and processing of ferro and metal alloys and manufacturing nickel alloys and stainless steel wires. The AO received the information from the DGIT(Inv), Sales Tax Department, Government of Maharashtra that the assessee has obtained accommodation entries for

purchase through the parties declared as hawala operators without taking physical delivery of the materials and the details of parties from whom the assessee purchase goods are as under :

S.No.	Hawala Name	FY	Amount (In Rs.)
1	Suraj Steel India	2010-11	1,38,49,500
2	Pooja Metal and Alloys	2010-11	1,52,98,500
		total	2,91,48,000

The AO issued a show cause notice to the assessee dated 21.1.2014 calling for various details and proofs to prove the genuineness of purchases which was replied by the assessee vide letter dated 26.2.2014 submitting the details of purchases, copies of ledger accounts and bank statements, bills and vouchers and transport receipt and delivery challans etc. The AO ,after considering the reply filed by the assessee, was of the opinion that the assessee could not prove the genuineness of the purchases and evidences of consumption of materials in the manufacturing of goods. The confirmation of these parties were also not filed and accordingly the AO added the entire purchases to the total income of the assessee and assessed the income of the assessee vide assessment order dated 19.3.2014 assessing the total income at Rs.10,20,47,590/-.

4. In the appellate proceedings, the FAA partly allowed the appeal of the assessee after considering the various submissions and contentions as raised by the assessee during the hearing before him and upheld the addition to the extent of 25% of the purchases by observing and holding as under :

"3.3 I have considered the facts and circumstances of the case. The appellant had purchased goods from M/s Suraj Steel India for Rs. 1,38,49,500/- and M/s Pooja and Alloys for Rs.1,52,98,500/- totaling to Rs.2,91,48,000/-. The AO treated the above purchase as bogus in nature as AO had received information from Investigation wing. But the purchaser. The appellant in its submissions states that AO had failed to appreciate the documents from the parties ledger accounts, bank statements, details of bills, etc copies of invoice against the transport bills and delivery challans to prove the genuineness of the purchases with regard to those two parties. The appellant further states that only AO had got information from sales tax authorities and without considering any documentary evidences submitted by them. The AO made disallowance. Here when we consider the above, appellant is a manufacturer. This type of case has arisen in the case of manufacturers and similar type of cases in Gujarat HC in CIT V/s Gujarat Ambuia Export Limited [20 14] 14 taxmann. com. 22 (Gujarat) wherein it is held as under:

"The entire Issue is based on materials on record. The Tribunal did not accept the revenue's stand that the purchases were bogus. The Tribunal committed no error so as to give rise to any question of law. The Tribunal looking to the material retained 5% of the purchase by giving cogent reasons.

In the instant case, though it may appear that the purchases have been shown to have been made through "V" but supplied by some other agency, in absence of other addl facts noted by this court gross adhoc addn of 25% may not be justified. In the instant case the assessee could produce

before the authorities the precise rate at which the purchases were made from "V" and other suppliers to demonstrate that the purchases made on the same day carried the same price. This would substantially eliminate the angle of the purchase price being artificially inflated. Additionally, the Tribunal also noted other parameters such as higher net and gross profit rates of the present year compared to the earlier years of the recent past. Under the circumstances no question of law arises.

3.4 When we examined the above case law of the Gujarat HC who had upheld the taxation of 25% of the amount of bogus purchase as taxable income. Here the appellant declared the net profit @3%, so 22% of bogus purchase may be treated as disallowable amount. Hence, AO may disallow 22% of bogus purchase amount as taxable profit. Hence ground of appeal is partly allowed."

5. We have heard the rival contentions and perused the material placed before us including the case law relied upon by the assessee. The undisputed facts are that the assessee had taken bogus bills from two parties aggregating to Rs.2,91,48,000/- without taking delivery of materials. The AO added the entire purchases to the total income of the assessee on the ground that the assessee could not prove the physical delivery having been taken and consumption thereof in the manufacturing of finished goods and also not filed confirmations from these two parties. Whereas the Id.CIT(A), after considering the submissions of the assessee observed that the assessee has already shown NP of 3% and restricted the addition to 25% of the total purchases and after allowing credit of GP

already declared the net addition to the tune of 22% was sustained. Having gone through the facts on record and the orders of lower authorities, we find that the assessee has availed hawalas entries in respect of purchases to the tune of Rs.2,91,48,000/-. But in such type of cases, the assessee purchases goods from gray market at cheaper rates thus gets additional benefit by avoiding VAT, and other levies. The assessee has already declared GP 18.21% during the year. Under these circumstances we are of the considered opinion that the addition sustained at the rate of 22% of the total purchases is excessive and unreasonable and keeping in nature of business of the assessee and GP declared by the assessee during the year and also the decisions of the Coordinate Benches wherein the additions are sustained to the tune of 5% to 12.5% there should be some reasonable disallowance. To maintain the consistency with the orders passed by the Tribunal earlier, we are inclined to sustain 12.5% of the total purchases. The assessee gets relief of 12.5%. The appeal of the assessee is partly allowed.

Revenue' appeal:

6. Since we have decided the issue raised by the assessee against the decision of the FAA and partly allowed the appeal, the ground raised by the revenue becomes infructuous and hence dismissed.

7. Resultantly, appeal of the assessee is partly allowed and that of revenue stands dismissed.

Order pronounced in the open court on 29th Sept, 2017.

Sd

sd

(C.N. Prasad)

(Rajesh Kumar)

न्यायिक सदस्य / Judicial Member **लेखा सदस्य / Accountant Member**

मुंबई Mumbai; दिनांक Dated :29th 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

आदेशानुसार/ BY ORDER,

True copy

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