

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 4650/Mum/2015

(निर्धारण वर्ष / Assessment Year : 2009-10)

ITO 9(2)(2) R.No. 601A, 6 th Floor, Aayakar Bhavan, M.K Road	बनाम/ v.	Chepar Plastics P. Ltd, B-17 Nadkishore Industrial Estate, Off Mahakali Caves Road, Mumbai 400093
स्थायी लेखा सं./ PAN : AAACC8814H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by :	Shri Rajat Mittal	

सुनवाई की तारीख /Date of Hearing : 05.10.2017

घोषणा की तारीख /Date of Pronouncement : 05-10-2017

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the Revenue, being ITA No. 4650/Mum/2015, is directed against the appellate order dated 19.05.2015 passed by learned Commissioner of Income Tax (Appeals)-16, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2009-10, appellate proceedings had arisen before learned CIT(A) from the assessment order dated 10.03.2014 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter called "the Act").

2. Instant appeal filed by Revenue for assessment year 2009-10 assailing order of the learned CIT(A) dated 19.05.2015 is filed on the grounds of appeal mentioned below.

" i) "Whether on the facts and in the circumstances of the case, the Ld. CIT-(A) erred in deleting the addition made on account of bogus purchases by holding that the genuineness of the transaction stood explained ignoring the fact that the parties/ concerns have been classified as a hawala dealer by the Sales Tax Department,

Maharashtra and their Directors/Proprietors have under oath confirmed that no transaction have been entered with the assessee and only accommodation entries were provided. "

ii) Whether on the facts and in the circumstances of the case, the Ld. CIT-(A) erred in deleting the addition made on account of bogus purchases thereby ignoring the fact that independent enquiries were conducted by the Assessing Officer to find out the veracity of the purchases by sending notices u/ s 133(6) which came back unserved with the remark "not known".

iii) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred to appreciate the fact that the entire addition made by the Assessing Officer on bogus Purchases ought to have been sustained as even after the purchases amounting to Rs 2,91,27,966/- are held to be bogus then the GP of the assessee will be 23% which is reasonable.

The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the IT09(2)(2) be restored."

3. At the very outset , it is noted that none has appeared on behalf of the assessee despite notice of hearing being served on the assessee . The learned DR has placed on record letter dated 27-09-2017 issued by AO confirming that notice of hearing for today i.e. 05-10-2017 has been served on Director of the assessee company namely Sh. Chetan Dhirajlak Parikh on 26-09-2017 and acknowledgement of receipt of notice of today's hearing by said Director is placed on record. On perusal of the order sheet entries it is noticed that nobody is appearing on behalf of the assessee when the appeal was called for hearing before the Bench from time to time. No application for adjournment has been moved by the assessee even today when the matter was listed before us. On the other hand Ld. D.R is present in the court and is ready with the arguments. It has also come to the notice of the bench that the ITAT ,Mumbai in ITA no.4042/Mum/2015 for assessment 2010-11 vide orders dated 02.06.2017 in assessee's own case has set aside the issues back to the file of the A.O with the direction to verify the factual matrix and pass fresh order. We have observed that learned CIT(A) has passed an appellate order dated 19-05-2015 for year under appeal i.e. AY 2009-10 by following decision of the learned CIT(A) for A.Y 2010-11 in assessee's own case, as detailed hereunder:

"Respectfully following the case laws discussed supra and also identical issue was discussed in my earlier order in the appellant's own

case for the A.Y. 2010-11 vide Appeal No.CIT(A)-16/ITO 8(1)(2)/IT-09/2013-14 dated 31.03.2015, the appeal for A.Y.2009-10 is also decided on similar lines. Therefore, it is settled law that without purchases there cannot be corresponding sales. The only logical conclusion is that the appellant must have made purchases from somewhere else and got the invoices from the above said dealers. Regarding the issue of G.P. rate it is also settled law that there cannot be any uniform yardsticks to apply the G.P. rate. Hence the AO is directed to apply the G.P. rate of 15% on the bogus purchase and the AO is directed to delete the balance addition . The ground of appeal is treated as partly allowed.

4. ITAT, Mumbai has now decided assessee's appeal for A.Y 2010-11 vide orders dated 02-06-2017 in ITA no. 4042/Mum/2015 by remanding the matter back to the file of the A.O by holding as under:

" 1. The instant appeal has been filed by the revenue for Assessment Year [A.Y]2010-11 assailing the order of the Commissioner of Income Tax (Appeals)-16 [CIT(A)], Mumbai dated 31.03.15 on the grounds mentioned herein below:-

GROUND OF APPEAL

1. "Whether on the facts and in the circumstances of the case, the Ld. CIT-(A) erred in deleting the addition made on account of bogus purchases by holding that the genuineness of the transaction stood explained ignoring the fact that these parties./concerns have been classified as a hawala dealers by the Sales Tax Department, Maharashtra and their Directors/Proprietors have under oath confirmed that no transaction have been entered with the assessee and only accommodation entries were provided. "

2. Whether on the facts and in the circumstances of the case, the Ld. CIT-(A) erred in deleting the addition made on account of bogus purchases thereby ignoring the fact that independent enquiries were conducted by the Assessing Officer to find out the veracity of the purchases by sending notices u/s.133 (6) which came back unserved with the remark "not known".

3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred to appreciate the fact that the entire addition made by the Assessing Officer on bogus purchases ought to have been sustained as even after the purchases amounting to Rs.1,52,96,9781-

are held to be bogus then the GP of the assessee will be 20.9% which is reasonable. "

The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the ITO 9(2)(2) be restored.

The appellant craves leave to amend or alter any grounds or add a new ground which may-be necessary.

2. *At the very outset, it is noticed that none has appeared on behalf of assessee and on the perusal of the order sheet we have noticed that nobody was appearing on behalf of assessee. Although the notice was also served upon the assessee for appearing before us, but even then the assessee has not preferred to appear and even no application for adjournment was moved today. On the other hand Ld. DR is present in the court and is ready with arguments. Therefore we have decided to proceed with the hearing of the case ex-parte with the assistance of the Id. DR and the material on record.*

Ground No. 1 to 3

Since all the grounds raised by the assessee are inter-connected and inter-related and related to deleting of additions made on account of bogus purchases, therefore we thought it fit to dispose of the same through the present common order.

As per the facts of the present case, the assessee filed its return of income declaring total income at Rs. 7,64,320/-. The order of assessment u/s 143(3) was passed by the AO assessing total income at Rs. 1,60,61,300/- by making additions disallowance on account of bogus purchases. The Ld. CIT(A) restricted the additions @ 15% on the bogus purchases vide order dated 31.03.15. Aggrieved by the order of Ld. CIT(A), the revenue has filed the present appeal by raising above grounds.

4. *We have heard the Ld. DR and we have also perused the material placed on record as well as the orders passed by revenue authorities. We have perused the order of Ld. CIT(A) wherein the Ld. CIT(A) has categorically mentioned in his decision at para no. 2.3 which is reproduced as under:-*

"It is also an admitted fact that the AO did not make any effort to make any independent inquiry regarding the genuineness of the parties from whom the material has been purchased. The assessment order is also silent on the plea of the appellant/assessee that parties at Serial No. 1, 2, 4, and 5 (list supra) are sundry creditors and no transaction has been made with these parties during the relevant period. "

Therefore, considering the facts, circumstances and observations made by Ld. CIT(A) in the present case as well as keeping in view the interest of justice, we remit the matter back to the file of AO with a direction to verify the factual matrix as indicated above and thereafter pass afresh order. It is needless here to mention that before passing the order, the AO shall provide sufficient opportunity of hearing to the assessee. Before parting, we may make it clear that our decision to restore the matter back to the file of AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the A.O independently in accordance with law.

5. In the net result, the appeal of the revenue is allowed for statistical purposes."

5. We find that factual matrix in the appeal of Revenue for AY 2009-10 before us is similar to that of A.Y 2010-11 and also similar grounds of appeal were raised by Revenue before ITAT in its appeal for AY 2010-11. Learned CIT(A) has also followed decision of learned CIT(A) for AY 2010-11 while adjudicating appeal for AY 2009-10. We donot find any reasons and justification for deviating from the decision of co-ordinate benches of the ITAT , Mumbai for AY 2010-11 in assessee's own case as the factual matrix is similar. Respectfully following decision of the co-ordinate bench of ITAT, Mumbai dated 02-06-2017 in ITA no. 4042/Mum/2015 for AY 2010-11 in assessee's own case, we are also restoring matter back to the file of A.O with similar directions as was directed by the tribunal while adjudicating appeal for A.Y 2010-11, as detailed above in the order of ITAT, Mumbai for AY 2010-11 which is reproduced above. We order accordingly.

6. In the result, appeal of the Revenue in ITA No. 4650/Mum/2015 for assessment year 2009-10 is allowed for statistical purposes.

Order pronounced in the open court on 05.10.2017

आदेश की घोषणा खुले न्यायालय में दिनांक: 05.10.2017 को की गई ।

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 05.10.2017

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, E
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI