



ITA NO.2674/Mum/2017
Dhiraj Ramesh Dama
Assessment Year 2011-12

आयकर अपीलीय अधिकरण "एफ" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI**

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

**BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No.2674/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2011-12)

Dhiraj Ramesh Dama C-1001, Golden Willows Vasant Garden Swapna Nagari Mulund (West) Mumbai-400 080	बनाम/ Vs.	Deputy Commissioner of Income Tax 12(1) (Now Assessed with DCIT 17(1) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.AACPD-6233-C		
(पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Pooja Swaroop, Ld. DR
Assessee by	:	Ritika Agarwal, Ld. AR

सुनवाई की तारीख / Date of Hearing	:	28/09/2017
घोषणा की तारीख / Date of Pronouncement	:	04/10/2017



ITA NO.2674/Mum/2017
Dhiraj Ramesh Dama
Assessment Year 2011-12

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2011-12 assails the order of the Ld. Commissioner of Income-Tax (Appeals)-28 [CIT(A)], Mumbai, *Appeal No. CIT(A)-28/IT-137/DCIT-12(1)/2014-15* dated 17/01/2017 *qua* confirmation of certain additions to the extent of 25% on account of *bogus purchases*. The assessment was framed by *Ld. Deputy Commissioner of Income Tax-12(1)* u/s 143(3) on 10/03/2013.

2.1 Facts leading to the same are that the assessee being *resident individual* engaged as *reseller of food stuff and hotel supplier* under proprietorship concern namely *J.K.Trading* was assessed u/s 143(3) for impugned AY on 10/03/2013 at Rs.2,22,17,790/- *inter-alia*, after addition of certain *bogus purchases* for Rs.1,94,68,007/- as against returned income of Rs.27,23,949/- *filed* by the assessee on 28/09/2012. The assessee reflected turnover of Rs.10.78 crores with *Net Profit rate* of 2.37%. The purchases stood at Rs.9.07 crores. The solitary issue involved in the present appeal is *alleged bogus purchases* of Rs.1,94,68,007/-.

2.2 Pursuant to receipt of certain information from *Sales Tax Department, Maharashtra* regarding dealers indulging in *bogus purchase bills*, it was noted that the assessee stood beneficiary of such *bogus purchase bills* to the tune of Rs.1,94,68,007/- from six such parties. The Ld. AO noted that the *Sales Tax Department* conducted independent inquiries and concluded



ITA NO.2674/Mum/2017
Dhiraj Ramesh Dama
Assessment Year 2011-12

that these dealers were engaged in providing accommodation entries only. The copies of documents received from *Sales Tax Department* with respect to six parties were provided to the assessee. The assessee was asked to furnish documentary evidences to substantiate the purchase transactions. The assessee, in turn, provided *ledger extracts, purchase bills, payments details etc.* to support the transactions. However, not convinced, the Ld. AO noted that the assessee failed to provide transportation details and further no *ledger confirmation* was filed from the supplier and mere payment through banking channels was not sufficient to prove the genuineness of the transactions particularly when independent inquiries in that regard was already been conducted by the *Sales Tax Department*. Finally, Ld. AO concluded that the assessee failed to discharge the onus casted upon him to prove these transactions and therefore, treating the impugned purchases as non-genuine, the same were added to the income of the assessee.

3. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 17/01/2017. The Ld. CIT(A) noted that this was the first year of assessee's business and Net profit rate reflected by assessee was 2.73% as against 3.21% shown against approx. double turnover in immediately succeeding year. Further, Ld. CIT(A) noted that the assessee failed to discharge the onus casted on him to substantiate the purchase transactions and therefore, restricted the impugned additions to the extent of 25% of *alleged bogus purchases*. Aggrieved, the assessee is in further appeal before us.



ITA NO.2674/Mum/2017
Dhiraj Ramesh Dama
Assessment Year 2011-12

4. The Ld. Counsel for Assessee [AR], drew our attention to the fact that the assessee was into supplies of *food stuff / exotic fruits* to reputed hotel chains against sales invoices, the deliveries of which was duly accepted by the customers. Further, the material was purchased from various suppliers and the same was duly supported by invoices and corresponding sales were made against the same. Further, the respective payments were made through banking channels and the material was sold at substantial profit margin and therefore, impugned additions were not justified. The Ld. AR also contended that Ld. AO, without making any independent inquiries, made the impugned additions, which was not justified at all. In the alternative, the Ld. AR pleaded that impugned additions were on the higher side and therefore, the same may be estimated at reasonable figures.

5. Per *Contra*, the Ld. DR vehemently opposed any further relief to the assessee on the premise that that *Sales Tax Department*, after extensive inquiries, came to conclusion that the suppliers in question were engaged in providing accommodation entries only without doing any actual business. The said inquiries, by itself, were quite sufficient to disallow the purchases in full. Since, adequate relief had already been granted by Ld. CIT(A), no further relief could be granted to the assessee on the facts of the case.

6. We have heard the rival contentions and perused relevant material on record. The assessee, in the *paper-book*, has placed financial statements and various documents so as to establish the genuineness of the purchase



ITA NO.2674/Mum/2017
Dhiraj Ramesh Dama
Assessment Year 2011-12

transactions. First of all, a perusal of the ledger extracts of the *alleged bogus suppliers* reveals a common pattern that the assessee has made continuous purchases from the suppliers without making any significant payment thereof in the impugned AY. Rather, the payments have been stretched as far as towards the close of succeeding AY. Further, no stock details are provided by the assessee in the *Tax Audit Report* placed on record. The assessee has submitted purchases invoices along with corresponding sales invoices for the contention that the material purchased by him has subsequently been sold by him and therefore, the purchases were genuine. It is admitted fact that the assessee has not been able to produce any *ledger confirmation* from any of the six suppliers and also could not produce any of the party for confirmation of transactions despite enjoying high credit period from the said parties and despite having continuous business dealing with them. *Per contra*, it is also noticed that Ld. AO has heavily relied on the inquiries of *Sales Tax Department* and came to a conclusion that the impugned purchases were *bogus purchases* without corroborating the same with cogent evidences.

7. We are of the considered opinion that there could be no sale without purchase of material keeping in view the assessee's nature of business which was *trading of food stuff*. The sales turnover achieved by the assessee has not been disputed or disturbed by the revenue and the payments of *alleged bogus supplies* were through banking channels. The purchases were backed by invoices. At the same time, the assessee could



ITA NO.2674/Mum/2017
Dhiraj Ramesh Dama
Assessment Year 2011-12

not produce *transportation details* or any *ledger confirmation* from any of the six parties. Not even a single party could be produced by him to substantiate the purchase transactions, which cast serious doubt on assessee's claim. The onus to substantiate the purchase transactions squarely lied on the assessee but the same could not be discharged fully. Therefore, in such a situation, the addition, which could be made, was to account for profit element embedded in these purchase transactions to factorize for profit element earned by assessee against possible purchase of material in the *grey market* and undue benefit of VAT against bogus purchases, which Ld. CIT(A) has rightly done. However, keeping in view the overall circumstances including the extent of evidences produced before us and nature of assessee's business, we find the same to be on higher side. Therefore, we restrict the same to 8% of alleged bogus purchases of Rs.1,94,68,007/- which comes to Rs.15,57,440/-. The Ld. AO is directed to re-compute the total income of the assessee in the light of the same.

8. Resultantly, the assessee's appeal stands partly allowed.

Order pronounced in the open court on 04th October, 2017.

Sd/-
(Saktijit Dey)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04.10.2017
Sr.PS:- Thirumalesh



ITA NO.2674/Mum/2017
Dhiraj Ramesh Dama
Assessment Year 2011-12

आदेश की प्रतिलिपि □ ग्रेषित/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,

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