

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'G', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G", MUMBAI

Before Shri Shamim Yahya, AM & Shri Shaktijit Dey, JM

ITA No.3444/Mum/2014 : Asst.Year 2010-2011

M/s.Realstone Exports Limited 204 Marine Chambers Sir V.T.Road, New Marine Lines Mumbai – 400 020. PAN : AACCR8504K.	बनाम/ Vs.	The Income Tax Officer Ward 8(3)(3) Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

Appellant by : --- None ---
Respondent by : Shri V.Vidhyadhar

सुनवाई की तारीख / Date of Hearing : 21.08.2017	घोषणा की तारीख / Date of Pronouncement : 03.10.2017
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आदेश / ORDER

Per Shamim Yahya, AM

This appeal by the assessee is directed against order of learned CIT(A) dated 06.03.2014 and pertains to assessment year 2010-2011.

2. The grounds of appeal read as under:-

1) *The learned Commissioner of Income- tax (Appeals) - 18, Mumbai failed to appreciate that the assessing officer erred in determining the total income of your appellant amounts to Rs. 3,21,38,490/- instead of Rs. 13,35,940/-*

2) *The learned Commissioner of Income- tax (Appeals) - 18, Mumbai failed to appreciate that the assessing officer has completed the assessment after due inquiry and passed the assessment order u/s 144 of I T Act, 1961*

3) *The Commissioner of Income- tax (Appeals) - 18, Mumbai failed to appreciate that the learned assessing officer has wrongly rejected book of account of your appellant by invoking provision of section 145 (3) of IT Act, 1961*

4) *The Commissioner of Income- tax (Appeals) 18. Mumbai failed to appreciate that the learned assessing officer has not allowed expenditure legitimate to the business shown in profit & loss account of your appellant amounts to Rs.46,96,195/-.*

5) *The learned assessing officer has wrongly charged interest U/s. 234 B of the Income- tax Act. 1961*

6) *Your appellant reserves the right to add, amend delete or alter any or all the above ground of appeal each of which without prejudice to the order.”*

3. The assessee has also moved additional ground of appeal, which reads as under:-

“1. The Id. CIT(A) erred in confirming the estimate of profit @ 1% made by the Assessing Officer without appreciating that in providing accommodation, the Appellant had charged commission of 0.1% on the turnover as per director's statement recorded and further as the issue is decided in Appellant's group concern case before ITAT, the same suit may be followed.

2. The Appellant craves leave to add, alter or amend all or any of the above Grounds of Appeal.”

4. Brief facts of the case are as under:-

4.1 During the course of assessment proceedings, the A.O. has called for various details regarding trading activity carried out by the assessee. Notice u/s 133(6) was also issued to various parties with whom the assessee has

claimed to have made purchase & sales transactions. During the course of assessment proceedings, the A.O. has received information provided by the Sales Tax authorities through the O/o. DGIT It was informed that the Sales Tax authorities had search operation in the case of the assessee company and concerns. During the course of these proceedings, statement of Abhishek S. Morarka, Director of M/s. Utkantha Trading Company Pvt. Ltd. one of the group companies of the assessee was recorded on 06.01.2010 u/s 14 of the Maharashtra Value Added Tax Act, 2002. In this statement, he has categorically stated that no actual purchase or sale activity was carried out by the concerns M/s. Realstone Exports Ltd., M/s. Citybase Multitrade Pvt. Ltd. and M/s. Utkantha Trading Company Pvt. Ltd. The A.O. has also annexed the statement of Shri Abhishek Morarka to this order. During the assessment proceedings, the A.O. has provided a copy of this statement to the assessee and asked to explain as to why these transactions shown in the books of account should not be treated as sham/non-genuine transactions. In view of these facts, the A.O. has also issued a questionnaire along with notice u/s 142(1) which is reproduced at page 2 - 3 of the assessment order. In response to the show-cause notice, the AR of the appellant has submitted its written reply which is reproduced at page 3 - 4 of the assessment order. The A.O, has considered the submissions of the appellant, but, not accepted because of the following reasons:-

- (i) *The assessee company has been stated to be engaged in trading in merchandise from the financial year 2005-06. For the sake of clarity, the transactions shown, expenses claimed and incomes*

offered by the assessee over the various years are tabulated as under-

<i>In crores</i>	<i>A. Y. 2008-09</i>	<i>A.Y. 2009- 10</i>	<i>A.Y. 2010- 11</i>	<i>A.Y. 2011- 12</i>
<i>Sales</i>	<i>123.73</i>	<i>216.55</i>	<i>273. 22</i>	<i>59.85</i>
<i>Interest Income</i>	<i>0.32</i>	<i>0.47</i>	<i>0.39</i>	<i>0.53</i>
<i>Purchases</i>	<i>126.49</i>	<i>271.44</i>	<i>290.59</i>	<i>85.84</i>
<i>Administrative expenses</i>	<i>0.18</i>	<i>0.40</i>	<i>0.47</i>	<i>Cannot be ascertaine d from e- filed return</i>
<i>Profit before tax</i>	<i>0.17</i>	<i>0.14</i>	<i>0.13</i>	<i>0.13</i>
<i>Sundry Creditors</i>	<i>46.95</i>	<i>95.90</i>	<i>178.32</i>	<i>101.64</i>
<i>Sundry Debtors</i>	<i>28.03</i>	<i>50.38</i>	<i>111.94</i>	<i>0.68</i>

(ii) *On perusal of the above details, it is seen that in all these years, in spite of showing a huge purchase and sales transaction, a meager profit has been shown as income even after taking into consideration other receipts like interest income.*

(iii) *Although the turnover over the year had oscillated from 50 crores to 275 crores, a small variation has been shown in the profit offered for the corresponding year which is in the range of Rs. 13 lakhs to Rs. 17 lakhs.*

(iv) *It is seen that in all these years, after excluding interest income and other receipts, the assessee has actually shown losses from trading activity.*

(v) *For carrying out activity on such a large scale, very few expenses have been shown in the return of income filed over the years.*

(vi) *Although during the assessment year under consideration the assessee company had claimed to effected purchases to the tune of RS. 290 crores and had shown sales to the tune of Rs. 275 crores, expenses towards transport and handling charges were shown at only Rs. 46,800/-.*

(vii) *In the A.Y. 2009 also, expenses to the tune of Rs.30,027/- were shown on a turnover of Rs. 216 crores.*

(viii) *In the reply to the question No. 16, Shri Abhishek Morarka, Director of Utkantha Trading Co. had categorically accepted that no actual purchases of sales activity were carried out by the assessee company and the group concerns like M/s. Utkantha Trading Co., M/s. City base Multitrade Pvt. Ltd. etc. in his statement recorded by the Sales Tax Authorities.*

(ix) *In reply to the question No. 17, Shri Morarka had again accepted that he had issued only tax invoices of these companies without doing actual purchase and sale of goods.*

(x) *Vide question No. 19, he was asked to explain the procedure of purchase and sale of different commodities from the starting point to the end point. In response to this question, Shri Morarka replied as under –*

"The same transaction is routed within group of companies i.e. the purchase is done from the company outside my group of companies and then it is routed through my two to three companies and thereafter it is either routed to the same company from which purchases effected or any of the company of the suppliers group."

(xi) *In this case, the assessee company had shown to have sold goods directly to the clients without actually taking their delivery from*

the suppliers. In this regard, vide submission filed on 06.03.2013, the representative of the assessee contended as under –

"In the markets existing in Mumbai and probably elsewhere in the country as well, it is common practice of the goods being sold from one person to another and then a third and so on without actually moving the material".

4.2 Regarding the notices issued u/s 133(6) to various parties with whom the assessee has made sale/purchase transaction, the A.O. has specifically asked to furnish copies of transport receipts, warehouse receipts, delivery challans etc., but, none of the parties had confirmed any sale/purchase with the assessee nor submitted any transport and warehouse receipts. Even, the assessee company has also failed to furnish any evidence in the form of transport receipts. The assessee company had shown only an amount of Rs. 46,800/- under the head 'transportation & handling charges'. In some cases, the parties had claimed that they had entered into bag to bag transaction and had not taken delivery of goods in most of the cases. In the notice u/s 142(1), the A.O. has asked the assessee to furnish item-wise entry of opening and closing stock with quantity and value of goods. In response to this, the assessee has submitted the details of opening and closing stock, the chart of which is given at page 5 of the assessment order. From the perusal of the details of opening and closing stock the A.O. has observed that the details given by the appellant are very vague, the specific information called for like type, variety, brand name, their gauges etc. were not provided which shows that the assessee company has not properly

maintained quantitative details of the commodities claimed to have been purchased and sold goods to the entities registered under VAT and issued and received purchase/sale invoices made as per the sale of goods. But, the A.O. has not accepted the sale/purchase of goods as genuine because no evidence has been filed for the purchase/sale of goods and also not confirmed by a single party that any sale/purchase has been made with the assessee company. Thus, the A.O. has held that merely VAT registration or preparing purchase/sales invoices as per Sales of Goods Act does not validate these transactions. Also the claim that all the payments regarding purchase/sale of these goods have been made through banking channels or that these transactions were recorded in the books of assessee does not prove the genuineness of these transactions. Apparently, these transactions were only the book entries and only the sham transactions. The A.O. has relied on the decision of hon'ble Supreme Court in case of CIT Vs. Durga Prasad More 82 ITR 540, Sumati Dayal Vs. CIT 214 ITR 804, decision of hon'ble Delhi High Court in case of Bhagat Construction Co. (P) Ltd. Vs. CIT 165 CTR 181, decision of hon'ble Calcutta High Court in case of CIT Vs. L.N. Dalmia 207 ITR 89, in case of V.Pinto & Co. Vs. DCIT 3 SOT 634 and the decision in case of Ratanlal Omprakash Vs. CIT 132 ITR 640, In view of these facts & circumstances, the A.O. has rejected the books of account of the appellant u/s 145(3) of the IT. Act and estimated the net commission @ 1% of the purchase/sale transactions shown by the assessee with the outside parties which were also taken care of the expenses incurred by the appellant to earn commission, therefore, an aggregate amount of bogus/accommodation entries amounting to Rs.2,79,76,16,626/- that commission income of the assessee @ 1% of these transactions was

computed at Rs. 2,79,76,166/- which was added back to the taxable income of the assessee.

5. Upon assessee's appeal, learned CIT(A) elaborately considered the issue and confirmed the action of the Assessing Officer dismissing all the grounds raised by the assessee as under:-

"I have considered the submissions of the appellant, order of the A.O. and facts of the case carefully, it is noticed that during the assessment proceedings, the A.O. has received information from the Investigation Wing of the department supplied by the Sales Tax Authorities i.e. search and seize operation was carried out in case of the assessee and its group companies. During this search operation, statement of Shri Abhishek Morarka, Director of M/s. Utkantha Trading Company was recorded u/s 14 of the Maharashtra Value Added Tax Act, 2002. He has specifically stated that no sales/purchase activity has been carried out in case of the assessee and other group companies, but, it was only book entries. The A.O. has given the copy of the statement to the appellant and asked to explain as to why these transactions shown in the books of account should not be treated as sham/non-genuine transactions. In response to the show-cause notice, the AR of the appellant has submitted its reply which is reproduced at page 2 - 3 of the assessment order. The A.O. has also issued notice u/s 133(6) of the IT. Act to various parties with whom the assessee has claimed to have made sales/purchase transactions. In these notices, the A.O. has specifically asked to furnish transport receipts, warehouse receipts, delivery challans etc. But, none of the party has confirmed that any sales/purchase transactions has been carried out with the assessee company nor submitted any transport receipt, warehouse receipt and delivery challans as called for. This fact was also confronted to the assessee company. The A.O. has also issued notice u/s 142(1) and called for a specific detail of opening stock, closing stock with quantity and value of the goods. In

response to this show-cause notice, the assessee company has given a very vague reply not mentioning the details as called for i.e. brand name, type of goods, variety and their gauges. Thus, the A.O. has concluded that the assessee company has not maintained quantitative details of the goods sold and purchased. Only, the paper formalities that sale/purchase invoices as per Sales of Goods Act and the payment made through banking channel was maintained which is not sufficient to prove that the assessee has actually made sales/purchases. Since the assessee has also not maintained complete quantitative details of the sale/purchase of goods, therefore, the A.O. has rejected the books of account after relying on various decisions of hon'ble courts cited above. The A.O. has held that the sales/purchases are only the book entries because the assessee has failed to submit any conclusive evidence to prove the same and also neither of the party has confirmed that any sale/purchase has been carried out with this company in response to the notices u/s 133(6). Thus, the A.O. has treated the sale/purchases as bogus and estimated the commission on Rs. 2,79,76,16,626/- @ 1% of these transactions was computed at Rs. 2,79,76,166/-.

On the other hand, the AR of the appellant has submitted that the A.O. has not justified by considering the 1% commission on purchase/sales made with outside parties. The A.O. has called for information u/s 133(6) from the suppliers and customers before passing order u/s 144 by invoking sec. 145(3) of the IT. Act. It was also argued that the A.O. has received information from all the parties and no error was pointed out. The AR has also argued that most of the purchases were made from registered dealers who are filing VAT returns. All transactions were routed through banking channels and no cash element was involved. All books of account have been maintained properly. In the statement given to the Sales Tax Authorities, the appellant has stated that 0.10% was the profit on turnover to the parties outside group parties. Thus, it was argued that the A.O. has not justified in adopting the 1% of gross sales and purchase as income of the assessee.

From the perusal of the submissions and facts of the case, it is clear that a search and seize operation was carried out by the Sales Tax Authorities in the case of the appellant and the group companies. Statement of Shir Abhishek Morarka, Director of M/s. Utkantha Trading Company, a group company of the assessee was recorded on 06.01.2010 under Sec. 14 of Maharashtra Value Added Tax Act, 2002. In the statement, he has specifically stated that no actual sale/purchase activity has been carried out by the assessee company and its group concerns, but, it was only the book entries. The A.O. has given reasonable opportunity to the assessee to explain these facts and file the evidence to prove the genuineness of sale/purchases. The A.O. has also issued notice u/s 133(6) to the parties with whom the assessee has made sales/purchases and specifically asked to file copies of transport receipts, warehouse receipts and delivery challans. In response to the notice u/s 133(6), neither the assessee company nor any other party with whom the sale/purchases have been made has submitted any documentary evidence in the shape of transport receipts, warehouse receipts and delivery challans to prove the genuineness of sale/purchases. The A.O. has specifically asked the assessee to submit complete quantitative details with opening and closing stock of goods purchased and sold. The assessee could not submit the specific details as called for, but, only given a vague reply. It is well settled established fact that to prove the genuineness of sales/purchases, the onus is always on the assessee, but in the present case neither the assessee nor the other parties could submit any documentary evidences to prove the genuineness of purchase/sales. Secondly, the assessee could not submit the quantitative details of the goods purchased and sold and also not submitted any transport receipts, warehouse receipts and delivery challans to prove the transportation of goods. In absence of proper stock register showing the quantitative details, the action of the A.O. in rejecting the books of account of the assessee is upheld. To strengthen the view of the A.O. reliance is placed on the decision of hon'ble Supreme Court in case of S.N.Namassivayam Chettiar Vs. CIT 38 ITR 579, Dhandiram Dhalichand Vs. CIT 81 ITR 609,

Punjab Trading Company Vs. CIT 53 ITR 335, Raja Textiles Ltd. Vs. CIT 86 ITR 673 and in case of Royal Medical Hall Vs. DCIT 46 ITR 748 where it is held that in absence of vouchers and quantitative tally of stock, profit can be estimated by the I.T.O. Regarding the merits of the case, it is established by the A.O. that neither the assessee nor any other party has submitted any documentary evidence in the nature of transport receipt, warehouse receipts and delivery challans to prove the transportation of goods sold and purchased, therefore, the A.O. has no other alternate except to estimate the income because the books of account has been rejected in absence of quantitative details u/s 145(3) of the IT. Act. The argument of the AR of the appellant that it has stated in the statement recorded that only 0,01% profit has been earned on book entries of sales/purchases, but, no documentary evidence has been filed to substantiate its claim also. In absence of any documentary evidence, this claim is also not accepted. The AR of the appellant has also failed to submit any comparable case where the commission has been charged on sales/purchases similar to the business of the appellant. Therefore, the estimation made by the A.O. @ 1% of purchase/sale transactions which are only book entries and actually no purchase/sale has been carried out is held as reasonable. Thus, the income determined at Rs. 2,79,76,166/- on the total accommodation entries of Rs. 2,79,76,16,6267- @ 1% of this amount is upheld and ground of appeal is dismissed.

2. *The 2nd & 3rd grounds of appeal are as under:-*

(2) The A.O. has completed the assessment after due inquiry and passed the assessment order u/s 144 of the I.T. Act.

(3) The A.O. has wrongly rejected book of account of your appellant by invoking provisions of Sec. 145(3) of the I.T. Act.

3. *From the perusal of the assessment order, it is found that the A.O. has passed order u/s 144 and also rejected the books*

of account of the assessee u/s 145(3) of the I.T. Act. During the assessment proceedings, the A.O. has given a number of opportunities to the assessee and asked to submit specific details which the assessee has failed to file. Similarly, the A.O. has asked the assessee to submit quantitative details showing the opening stock and the closing stock of the goods sold and purchased in a specific proforma which the assessee has also failed to submit. Thus, the A.O. has passed order u/s 144 and also rejected the books of account u/s 145(3) of the I.T. Act.

3.1. Before me, the appellant has submitted as underlie A.O. rejected the books of appellant by invoking sec. 145(3) of the I.T. Act on the following grounds to passing the order u/s 144 of the I. T. Act:-

(i) Whether the assessee has regularly employed a method of accounting.

(ii) Even if regular adoption of a method of accounting is there, whether the annual profits can properly be deducted from the method employed.

(iii) Whether the accounts are correctly maintained.

(iv) Whether the accounts maintained are complete in the sense that there is no significant omission therein.

The A.O. found negative answer of all the above question at his own. Submission of your appellant in above stated matter is as follows:-

(i) The assessee is assessed from A. Y. 2004-05 and onwards and regularly employed a method of accounting since then,

(ii) The assessee is regularly employed a method of accounting and the annual profit is properly drawn from the method regularly employed.

(iii) The assessee maintained proper books of account and produced before the A.O. during the assessment proceedings,

(iv) The A.O. has verified the books of account, gathered information from various parties tallied with the books of the assessee and no omission was detected.

With the above, the A.O. is not correct to reject the books of your appellant when all the above conditions are satisfied, therefore, the appellant pray you that assessment made on basis of 1% adhoc on sales and purchases to the outside parties is not tenable at all whereas the gross profit of your appellant is 0.05% drawn from the books of account regularly employed by them, hence commission income should be 0.05% after meeting all business expenses instead of 1% determined by the A.O.

3.2. I have considered the submissions of the appellant, order of the A.O. and facts of the case carefully, it is noticed that the A.O. has given reasonable opportunity to the assessee to submit specific details as mentioned in the notice u/s 142(1) of the I.T. Act, but the assessee has submitted only general and vague reply without filing the specific details called for. Thus, the A.O. has passed order u/s 144 of the I.T. Act. The A.O. has also called for specific details relating to the quantitative details of goods sold and purchased in a specific proforma, but, the assessee has filed only a general and vague reply, therefore, the A.O. has held that the assessee has not maintained quantitative details of the commodities sold and purchased and rejected the books of account.

On the other hand, the AR of the appellant has submitted that the assessee has regularly employed a method of accounting and there is no change in the year under consideration. It was also submitted that the assessee has maintained complete books of account and stock register, therefore, the A.O. is not justified in rejecting the books of account. Since the details have been filed before the A.O., therefore, the A.O. is not right in passing the order u/s 144 of the I.T. Act.

From the perusal of the submissions and facts of the case, it is clear that the assessee was given a reasonable opportunity to file complete details with documentary evidences to prove the

genuineness of purchase/sales, but, no documentary evidence was filed, only general written submissions made along with copy of sales/purchase invoices and payment made through banking channel. The specific requirement to prove the genuineness of purchases that the assessee was asked to submit like transport receipts, warehouse receipts, delivery challans etc. but, these were never submitted before the A.O. nor by any party to whom notice u/s 133(6) were issued had submitted this specific details, therefore, the order passed by the A.O. u/s 144 is upheld. Regarding the rejection of books of account u/s 145(3), the A.O. has called for specific quantitative details of purchased/sold, but, the assessee has given a vague reply which shows that the assessee has not properly maintained quantitative details which he is liable to maintain. To strengthen the view of the A.O., reliance is placed on the decision of hon'ble Allahabad High Court in case of Avadesh Pratap Singh and Abdul Rehman Brothers Vs. CIT 76 Taxman.com 106 where it is held that in absence of stock register, cash memos coupled with other factors like absence of vouchers in support of the expenses and purchases and existence of low profit may give rise to legitimate interference that all is not well with the books of account and same cannot be relied on, the authorities in rejecting the books of account u/s 145(e) is justified. The hon'ble Supreme Court in case of S.N.Namassivayam Chettiar 38 ITR 579 is also held that keeping of stock register is of a great importance because that is a means of verifying the assessee's accounts by having a quantitative tally if after taking into account of the material including the want of stock register it is found that from the method of accounting the aggregate profit of the business are not deductible, the provisions u/s 145(3) would be attracted. In view of these facts & circumstances and the decisions of hon'ble courts, it is held that the assessee has not maintained any stock register properly and also not maintained the bills/vouchers relating to transportation of goods, warehouse receipts and delivery challans, therefore, the action of the A.O. in rejecting the books of account is upheld. In totality of facts & circumstances, the decision of the A.O. in passing the order u/s

144 and rejecting the books of account u/s 145(3) is upheld and ground of appeal is dismissed.

4. The 4th ground of appeal is as under-

The A.O. has not allowed expenditure legitimate to the business shown in profit & loss account of your appellant amounts to Rs.46,96,195/-.

4.1. The A.O. has observed that the assessee has claimed administrative expenses of Rs. 46,96,195/- in the profit & loss account. During the assessment proceedings, the A.O. has called for complete details of these expenses and the trading activity of the assessee company. But, in the course of assessment proceedings, the A.O. has held that the assessee has not made any actual sale/purchase of goods, but, only taken book entries. Therefore, the A.O. has estimated the income @ 1% of the total turnover of sales/purchases and also held that since no sales/purchases have been made by the assessee, therefore, the expenses claimed are not allowable.

4.2. Before me, the appellant has submitted as under-

Your appellant has incurred administration and other expenses towards business amounts to Rs. 46,96,195/- which are legitimate and in normal course of business are to be allowed before calculating the total income of your appellant.

4.3. I have considered the submissions of the appellant, order of the ; A.O and facts of the case carefully, it is noticed that in the assessment order, the A.O. has held that the assessee has not made any actual sale/purchase as claimed in the return of income, but, has only taken book entries. Therefore, the A.O. has estimated the income of the appellant company @ 1% of the total sales/purchases by taking care of the expenses debited to the profit & loss account.

On the other hand, the AR of the appellant has submitted that the administrative and other expenses amounting to Rs.

46,96,195/- were incurred which were legitimate and in normal course of business.

From the perusal of the submissions and facts of the case, it is / clear that the assessee has not made any sales/purchases, but, only taken book entries, therefore, the incurring of expenses is not proved as genuine. As per the provisions of Sec. 37(1) of the IT. Act, the onus is always on the assessee to prove that the expenditure was wholly and exclusively for the business purposes But, in the present case, the assessee has failed to prove the genuineness of purchase/sales and has taken only book entries, therefore, the expenses debited to the profit & loss account is also a bogus expenditure which cannot be held as incurred for business purposes. In view of these facts & circumstances, the decision of the A.O. in disallowing the amount of expenses of Rs. 46,96,195/- is upheld and ground of appeal is dismissed.”

6. Against the above order, the assessee is in appeal before the ITAT.
7. We have heard the learned Departmental Representative. None appeared on behalf of the assessee despite notice. It is noted that this case has been fixed on several occasion earlier also, but was adjourned due to non-appearance on behalf of the assessee, hence we proceed to adjudicate the issue by perusing the records and hearing the learned Departmental Representative.
8. We find that this case relates to bogus entry operator. Assessee has been found to be indulging in bogus purchase and sales. Assessing Officer has received information to this effect from Investigation Wing of the Income Tax Department, which were supplied by the Sales Tax Authorities. One of the Directors of the assessee group company had specifically stated that no sales / purchase activities were carried out in the case of the assessee and

other group companies. It was only making book entries. The Assessing Officer has given a copy of the statement to the assessee and asked for the response. The Assessing Officer found no cogency in the submission of the assessee. The Assessing officer has also issued a notice u/s 133(6) to various parties from whom the assessee has claimed to have made sales / purchases. None of the party has confirmed that any sales / purchase transaction has been carried out by the assessee-company nor submitted any transport receipt, warehouse receipt and delivery challans as sought for. No quantitative detail of sales and purchase has been provided by the assessee. These facts make it amply clear that the assessee is engaging into bogus activities. In these circumstances, Assessing Officer has rejected the books of account and considered 1% commission on purchase / sales made with outside parties as assessee's income. The facts enumerated above clearly indicate that assessee is entry operator and showing fictitious purchase and sales. In the absence of any response from the assessee's so called purchasers and sellers and in the absence of any quantitative details, we are of the considered opinion that there is no infirmity in the rejection of books.

9. As regards the issue of reasonable opportunity, we find that the learned CIT(A) is right in holding that the assessee has been given adequate opportunity.

10. As regards allowability of expenditure claimed by the assessee, we find that since the assessee's entire activity has been found to be dealing in bogus entry operation, learned CIT(A) has rightly held that in such situation there is no question of allowing administrative and other expenditure.

11. Now we come to the estimate of 1% income out of the bogus purchases and sales made by the Assessing Officer, we are of the considered opinion that Revenue Authorities in this regard have been extremely fair. It is undisputed that the assessee is engaging into bogus entry operations. In a similar case of bogus activity, the Hon'ble Delhi High Court in the case of CIT v. D.K.Garg in ITA No.115/2005 vide order dated 04.08.2017 has set aside the Tribunal's order granting part relief and has upheld addition of the entire amount. The Hon'ble Court's following observation may be gainfully referred –

“It is noted that basically, what an accommodation entry provider does is to accept cash from an Assessee and arranges to have a cheque issued from his own account or some other account, usually of 'paper' or fake entities, to make it appear to be a loan or an investment in share capital. "The accommodation entry provider usually charges a commission which is deducted upfront. Where the Assessee is unable to explain the source of such credit in his account - i.e. by demonstrating the identity of the provider of the credit, the creditworthiness of such entity, and the genuineness of the transaction - the credit entry is treated as unexplained and the income is treated under Section 68 of the Act as the income of the Assessee.

In the instant case, we are dealing with an Assessee who does not deny that he is an accommodation entry provider. He, in fact, makes no bones of the fact that he either owned or floated 'paper companies' only for that purpose. He also does not dispute the fact that he has not been able to explain the source of all the deposits in his accounts or the ultimate destination of all the outgo from his accounts.”

12. The Court further observed that the assessee had to make a clean breast of all the facts within his knowledge concerning the credit entries in the accounts. He has to explain with sufficient detail the source of all the deposits in his accounts as well as the corresponding destination of all payments from the accounts. The assessee should be able to show that money has been transferred through banking channels from the bank account of creditors to the bank account of the assessee, the identity of the creditors and that the money paid from the accounts of the assessee has returned to the bank accounts of the creditors. The assessee has to discharge the primary onus of disclosure in this regard.

13. We find that the ratio from the above case law is applicable in the case before us also.

14. The difference in the case before us only is that assessee has charged upfront commission and issued fake sale / purchase entry bills. In our case also by way of additional ground assessee admits the position that he is entry operator. But the assessee here also has not given the requisite details as mentioned in the case law above.

15. In such situation, in our considered opinion, there is no justification in the assessee's claim by way of the additional ground that the addition should be limited to 0.1%. We note that this appeal is filed by the assessee. Hence, it will not be permissible or fair on our part to take away the relief already granted by the Revenue authorities. Hence, despite the precedence from the Hon'ble Delhi High Court above, since it is an assessee's appeal, we uphold the order of the learned CIT(A).

16. In the result, this appeal filed by the assessee stands dismissed.

Order pronounced on this 3rd day of October, 2017.

Sd/-
(Shaktijit Dey)
JUDICIAL MEMBER

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 03.10.2017.
Devdas*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A), Mumbai
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

		Date	Initial	
1.	Draft dictated on	20.09.2017		Sr.PS
2.	Draft placed before author	21.09.2017		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Draft dictation sheets are attached			Sr.PS