

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “एफ”, मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL BENCH “F” MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM**  
**श्री महाविर सिंग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष**

ITA NO.1747/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s Premier Core Industries C-43/A-5, Ferrodia Industrial Co- operative Society, Road No.22, Wagale Industrial Estate, Thane (W)-400604	<u>बनाम/</u> Vs.	Dy. Commissioner of Income Tax, Circle 3, Thane
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./PAN : AAJFP4152H		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by	:	None
प्रत्यर्थी की ओर से/ Revenue by	:	Shri T A Khan
सुनवाई की तारीख /Date of Hearing	:	24.8.2017
घोषणा की तारीख /Date of Pronouncement	:	11.10.2017

**आदेश / ORDER**

**PER RAJESH KUMAR, A. M.:**

The captioned is appeal by the assessee pertaining to assessment years 2009-10. The appeal is directed against the order of the CIT(A)-2 Aurangabad dated 19.1.2016 which in turn has arisen from an order

passed by the Assessing Officer dated 4.3.2014 under section 143(3) r.w.s.147 of the Income Tax Act, 1961.

Act.

At the outset, we would like to mention here that neither the assessee or his authorized representative appeared before this Tribunal when the appeal was called for hearing nor was any application seeking adjournment of the hearing received in the office of the Tribunal despite service of notice through RPAD. Therefore, we proceed to dispose of the appeal of the assessee ex-parte after hearing the Id.DR.

2. Only issue raised in this appeal is against the part confirmation of addition of Rs.3,89,126/- being 15% of the alleged bogus purchases of Rs.25,94,174/- by the Id.CIT(A) as against the addition equal has been made by the AO.

3. Facts of the case are that the AO received information from the DGIT(Inv), Sales Tax Department, Government of Maharashtra that the assessee was one of the beneficiaries of the bogus purchase bills racket operating in the State. The AO thereafter issued notice u/s 148 of the Act on 25.3.2013 which was replied by the assessee on 18.4.2013. During the course of assessment proceedings, the AO found that the assessee has availed bogus purchase bills from two parties i.e Rajendra Impex India

Rs.19,16,510/- and Tara Enterprises Rs.6,77,664/- aggregating to Rs.25,94,174/-. To verify the genuineness of the purchases, the AO issued notice u/s 133(6) of the Act to these hawala parties which were returned unserved. Thereafter, the inspector was deputed to verify the addresses of the parties, however, none of them were found on the addresses submitted by the assessee. Accordingly, the AO, after considering the reply of the assessee, came to the conclusion that the assessee has taken hawala entries amounting to Rs.25,94,174/- which was treated as unexplained expenditure and added to the total income of the assessee while framing assessment u/s 143(3) vide order dated 4.3.2014 assessing the income at Rs.73,37,256/-. The matter carried to the First Appellate Authority, who vide para 16 of the appellate order considered the submissions and contentions of the assessee and came to the conclusion as under :

*"16. In view of the foregoing discussions, the percentage of disallowance of bogus purchase has to be assessed on the facts of each case hence the same cannot be represented in every case. The directions submitted in the cases of Sanjay Oil Cake Industries (supra) and Vijay Protein Ltd (supra) are however distinguishable on facts since in case of Sanjay oil Cake Industries, a specific finding was given by the Assessing Officer that the purchases were made from the alleged bogus suppliers at higher rate as compared to the other parties. In the case of Vijay Proteins Ltd., after examining the bank account, it was established that cheques issued to various parties were deposited in one of the accounts; which were found to be owned by the assessee himself but there are no such*

*circumstances in the present case. Moreover the question whether entire purchase should be disallowed or addition should be restricted to the profit embodied on sale proceeds as answered by Hon'ble Gujarat High Court in the case of CIT V/s. President Industries (258 ITR 654) and the Hon'ble Madhya Pradesh High Court in the case of CIT V/s Balchand Ajit Kumar (263 ITR 610) considering the above decisions, it is clear that only the profit embodied on sale proceeds should be taxed instead of addition on account of entire purchases. Looking to the circumstantial evidence in the present case, it is evident that impugned purchase from the alleged supplier was not genuine and such purchases were actually made from open market. One has to consider the totality of facts, surrounding circumstances and human probability for arriving at such a conclusion. In the present case, the assessee is not willing to come clean and hence one will have to take recourse to material on record for arriving (at any conclusion. The assessee has failed to produce the suppliers and was also unable to prove that the goods in question were actually sent by the alleged supplier. In view of facts and circumstances in the present case, I accordingly hold that the appellant has failed to prove the genuineness of purchases made from the said suppliers. However, the action of the AO to disallow 100% of the unverifiable purchase cannot be upheld and consequently impugned additions can not be sustained. The assessing officer has .....deduction and were not altered on the assessee..... Appellant had actually purchased the materials in cases from the open market and only bill was taken from the said suppliers. It is also not in dispute that the purchase amount had been paid to the alleged supplier through banking channel, What the appellant had actually earned in hawala transactions could not have exceeded 15% inclusive of various taxes and profits on cash transaction. In view of these facts, this is not a case where the entire cash has been siphoned off by debiting the bogus purchases. This is a case where at the most, the purchases/expenses might have been inflated. The assessee has submitted a gross profit analysis and has shown that the average of gross profit between assessment years 2008-09 to 2012-13 is 13.5%. The highest gross profit is achieved in the AY 2011-12 when it was 15.75% and the lowest gross profit is at 10.61% in AY 2009-10 i.e. the year when purchases were made from hawala dealers. Obviously, this is due to the fact that purchases have been inflated. Therefore, relying upon the decision of Hon'ble Gujarat*

*High Court in the case of Simit P Seth (365 ITR 451) I direct the assessing officer to restrict the addition to Rs.3,89,126(15% of Rs.25,94,174)/- instead of Rs.25,94,174/- made by him. The appellant gets relief of Rs.22,05,048/-. This ground of appeal is partly allowed."*

4. We have carefully considered the contentions of the Id DR and perused the material placed before us including the orders of authorities below. The undisputed facts are that the assessee was found to have availed accommodation entries of bogus purchases from 2 parties as has been stated hereinabove which could not be verified by the AO even after issuing the notice u/s 133(6) of the Act which were turned unserved. Even the Inspector was deputed to verify these parties reported that none existed on the given addresses. The Id.CIT(A) partly allowed the appeal of the assessee by sustaining 15% addition after considering various contentions and submissions made by the assessee thereby deleting 85%. In the similar facts and circumstances of the Co-ordinate Benches have taken a consistent view that some addition covering the various types of saving which the assessee has made by purchasing the goods from the grey market should be made. In the instant case ,it would be fair and reasonable to sustain the addition at the rate of 12.5% of bogus purchases to cover the leakages of the revenue and the savings made by the assessee by way of VAT and other incidental charges. Thus taking a

consistent view with coordinate benches of the Tribunal earlier, we set aside the order of the Id.CIT(A) and direct the AO to accept 12.5% of the purchases made by the assessee.

5. In the result, the appeal of the assessee stands partly allowed.

Order pronounced in the open court on 11th Oct, 2017.

Sd

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**(महाविर सिंग/Mahavir Singh)**  
**न्यायिक सदस्य / Judicial Member**

**(राजेश कुमार/Rajesh Kumar)**  
**लेखा सदस्य / Accountant Member**

मुंबई Mumbai; दिनांक Dated : 11th Oct.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