

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SRI P.K. BANSAL, VP AND SRI MAHAVIR SINGH, JM**

ITA No. 4593/Mum/2015

(A.Y:2008-09)

Starlight Systems Pvt. Ltd. 5 th – 9 th Floor, Housefin Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai: 400 051	Vs.	The Asst. Commissioner of Income Tax, Centre Circle -21, Mumbai
Appellant	..	Respondent
PAN No.AAFCS7733L		

Assessee by : Jay Shah, AR

Revenue by : Ram Tiwari, DR

Date of hearing: 23-10-2017 **Date of pronouncement :** 27 -10-2017

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-51, Mumbai, [in short CIT(A)] in appeal No. CIT(A)-51, dated 10.06.2015. The Assessments were framed by the Assistant Commissioner of Income Tax, Centre Circle-21, Mumbai (in short ACIT or AO) for the assessment year 2008-09 vide order dated 28-03-2014 under section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act').

2. At the outset, the learned Counsel for the assessee stated that, he has not interested in prosecuting ground No. 1 and 2 regarding disallowance of claim of expenses relatable to exempt income under section 14A of the Act read with Rule 8D of the Rules. The learned



Senior Departmental Representative has not objected to the same. As the learned Counsel for the assessee has not pressed this ground under the instruction of the assessee, the same is dismissed as not pressed.

3. The only surviving issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in disallowing the bogus purchases of ₹ 10,62,566/-. For this assessee has raised following ground No.3: -

“3. On the fact and circumstances of the case as well as in law, the learned CIT(A) has erred in confirming the action of Assessing Officer in reducing the work-in-progress of signature island Project by the ₹ 10,62,566/- treating the genuine purchases as alleged unexplained expenditure on the basis that the assessee was unable to prove the gaminess of transaction by producing the party before the learned Assessing Officer, without appreciating the fact and circumstances of the case.”

4. Briefly stated facts are that the assessee has claimed a total expenditure in the work-in-progress of ₹ 7,13,88,010/- in its accounts. The AO noticed that the assessee has effected purchases from the following two parties, identified as (i) M/s Amar Enterprises (₹ 5,31,802/-) and (ii) M/s. Nageshwar Enterprises (₹ 5,30,764/-), which are hawala parties. According to AO, the assessee is in the construction business and he has debited these purchases in the books of Signature Land Project and therefore, he has reduced the profit by the amount of these bogus purchases of ₹ 10,62,566/-. Accordingly, the AO reduced the aggregate amount of purchase of ₹ 10,62,566/- from the work-in-progress on account of Signature Land Project. Aggrieved, assessee preferred the



appeal before CIT(A), who also confirmed the action of the Assessing Officer. Aggrieved, now assessee is in second appeal before Tribunal.

5. We have heard the rival contention and gone through the facts and circumstances of the case. We find from the facts of the case that the assessee is in the business running business center and real estate and also construction activity. The assessee has produced bills and vouchers for purchase of these items from these above stated two parties but could not get it confirmed. Admittedly, these purchases are from hawala parties as identified by Maharashtra Sales Tax Department. Once these are hawala parties, we are of the view that a profit rate should be applied to the bogus purchases. Accordingly, we direct the AO to apply the profit rate at the rate of 12.5% of the bogus purchases of ₹ 10,62,566/- for these two parties. We direct the AO accordingly. The appeal of assessee is partly allowed.

6. **In the result, the appeal of assessee is partly allowed.**

Order pronounced in the open court on 27-10-2017.

Sd/-
(P.K. BANSAL)
VICE PRESIDENT

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 27-10-2017

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI