



ITA.No.5261 & 5017/Mum/2015
Nishigandha Polymers Private Limited
Assessment Year-2009-10

आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

श्री डी.टी. गरसिया, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI D.T. GARASIA, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.5261/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2009-10)

Income Tax Officer 2(2)(3) R.No.542,Aayakar Bhavan M.K.Road Mumbai-400 020	बनाम/ Vs.	Nishigandha Polymers Private Ltd 3 rd Floor, Rustom Building 29,Veer Nariman Road Mumbai-400 023
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACN-6044-J		
(आपीलकर्ता / Appellant)	:	(प्रत्यर्थी / Respondent)

&

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स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACN-6044-J		
(आपीलकर्ता / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Bhupendra Karkhanis ,Ld.AR
Revenue by	:	Suman Kumar, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	26/10/2017
घोषणा की तारीख / Date of Pronouncement	:	01/11/2017



आदेश / ORDER

Per Bench

1. These are cross appeals by assessee as well as revenue for Assessment Year [AY] 2009-10 which contest the order of Ld. Commissioner of Income-Tax (Appeals)-5 [CIT(A)], Mumbai, *Appeal No. IT-10/14-15/17/15-16 order dated 07/08/2015* qua confirmation of certain additions on account of *bogus purchases*. The assessment for impugned AY was framed by *Ld. Income Tax Officer 2(2)(3)*, Mumbai on 10/02/2014 u/s 143(3) read with section 147 of the Income Tax Act, 1961. The registry has noted that the appeal of the revenue is delayed by 31 days. However, upon perusal of *Authorization Memo* dated 05/11/2015 placed on record, it is noted that correct date of communication of impugned order is 15/09/2015 which is wrongly written as 07/08/2015 in Form No.36 and therefore, *prima facie*, the appeal is in order and moreover, the assessee has not raised any objection against the same. Further, the assessee has withdrawn the ground relating to validity of *reassessment proceedings* during hearing before us and hence, the same is treated as not pressed. The only dispute involved in the appeal is estimated addition against certain alleged *bogus purchases* made by the assessee.

2.1 Facts leading to the same are that the assessee being resident corporate assessee engaged as *importer & trader of Synthetic Rubber & Allied Products* was subjected to an assessment u/s 143(3) read with *Section 147* for impugned AY on 10/02/2014 where the income of the



assessee was determined at Rs.66,08,700/- after certain additions of *alleged bogus purchases* for Rs.49,65,480/-. The original return was filed on 24/09/2009 at Rs.16,43,224/- which was processed u/s 143(1). The solitary issue involved in the appeal is addition of certain bogus purchases.

2.2 The reassessment proceedings were initiated upon receipt of certain information from *Sales Tax Department, Maharashtra* regarding dealers indulging in *bogus purchase bills* and it was noted that the assessee stood beneficiary of such *bogus purchase bills* to the tune of Rs.71,77,726/- from eleven such parties. Consequently, notice u/s 148 dated 22/02/2013 was issued to the assessee which was followed by statutory notices u/s 143(2) and 142(1).

2.3 The assessee submitted *ledger extracts, invoices, bank statements evidencing payment to suppliers* but could not substantiate delivery thereof. The Ld. AO noted that the assessee failed to discharge the primary onus of proving the purchase transactions by producing any of the suppliers and therefore, treated the same as non-genuine purchases. Finally, Ld. AO worked out peak additions against these purchases at Rs.49,65,480/- and added the same to the income of the assessee.

3. Aggrieved, the assessee contested the same with partial success before Ld.CIT(A) vide impugned order dated 07/08/2015 where the Ld. CIT(A), relying on the decision of Hon'ble Gujarat High Court in *CIT Vs. Simit P.Sheth [38 Taxmann.com 385]* restricted the additions to 12.5% of *alleged bogus purchases*. Aggrieved, the revenue as well as assessee is in appeal before us.



4. The Ld. Counsel for Assessee [AR] drew our attention to the fact the purchases were backed by invoices and the payments were through banking channels. Moreover, complete quantitative reconciliation of sale, purchase and stock was available on record and hence, the impugned additions were not justified. The Ld. AR, in the alternative, pleaded for some reasonable estimation against the same.

5. Per *Contra*, Ld. Departmental Representative [DR] placing reliance on the stand of Ld. AO contended that the assessee failed to prove the genuineness of impugned purchases and despite that, Ld. AO restricted the impugned additions to peak of purchases which was quite fair and reasonable. Our attention was drawn to the fact that the assessee failed to prove the actual delivery of material.

6. We have carefully heard the rival contentions and perused relevant material on record. We are of the considered opinion that there could be no sale without purchase of material since the assessee was engaged in *material intensive business*. The sales turnover achieved by the assessee has not been disputed or disturbed by the revenue and the payments were through banking channels. The purchases were backed by invoices and quantitative reconciliation was available on record. At the same time, the assessee could not produce any of the suppliers to confirm the transaction and also could not prove actual delivery of material. 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 such bogus purchases, which Ld. CIT(A) has rightly done



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so. However, keeping in view overall facts and circumstance and nature of assessee's business, we restrict the impugned additions to 10% of *alleged bogus purchases* of Rs. 71,77,226/- which comes to Rs.7,17,723/-. The order of Ld. CIT(A) stands modified to that extent.

7. Resultantly, the revenue's appeal stands dismissed whereas assessee's appeal stands partly allowed.

Order pronounced in the open court on 01st November, 2017.

Sd/-
(D.T. Garasia)
न्यायिक सदस्य / **Judicial Member**

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

मुंबई Mumbai; दिनांक Dated : 01.11.2017
Sr.PS:- *Thirumalesh*

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