

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “सी”, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL BENCH “C” MUMBAI
BEFORE SHRI D.T.GARASIA, JM AND SHRI RAJESH KUMAR, AM

I.T.A. No.2374 and 2380/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2009-10 & 2010-11)

Sanjay Chemicals India Pvt Ltd, 5 th floor, Kanmoor House, Condominium, 281/287 Narsi Natha Street, Mumbai-400009	बनाम/ Vs.	Dy.Commissioner of Income Tax, Central Circle 2(3), Mumbai.
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स्थायी लेखा सं./PAN : AAFCS2929E		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by	:	Shri Prakash Jhunjunwala
प्रत्यर्थी की ओर से/ Revenue by	:	Shri Rajat Mittal

सुनवाई की तारीख /Date of Hearing	:	4.9.2017
घोषणा की तारीख /Date of Pronouncement	:	25.10.2017

आदेश / ORDER

PER RAJESH KUMAR, A. M:

The captioned are appeals by the assessee pertaining to assessment year 2009-10 and 2010-11. Both these are directed against the order of Id.CIT(A)-48 dated 9.3.2017. Since the issues agitated in these appeals are almost identical in nature, we shall take up the appeal relating to the assessment year 2009-11 filed by the assessee first as this being the lead case. The facts relating to the issues under consideration are discussed

hereunder with reference to A.Y 2009-10 and similar are the facts with respect to assessment year 2010-11 except figures.

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2. The assessee has taken five grounds in this appeal and whereas, the assessee did not press grounds of appeal no.1 to 3, therefore dismissed as not pressed.

3. The grounds of appeal no.4 and 5 are against the sustenance of addition of Rs.45,76,535/- at the rate of 12.5% of alleged bogus purchases of Rs.3,66,12,285/- by the CIT(A) as against the total disallowance made by the AO of such alleged purchases.

4. The facts of the case are that the assessee filed return of income on 29.9.2009 declaring total income of Rs.1,88,08,230/-. A survey u/s 133A was carried on at the business premises of the assessee on 18.1.2013 by DDIT(Inv), Unit –IV(4), Mumbai and consequently the assessment was reopened u/s 148 of the Act on 11.11.2013. During the course of re-assessment proceedings, the AO found that the assessee has made some bogus purchases from three parties aggregating to Rs.3,66,12,285/- Accordingly, the assessee was asked to prove the genuineness of the said purchases. The assessee during the course of assessment proceedings, filed necessary evidences such as name and addresses of the parties, copies of ledger accounts, purchase bills, , corresponding sale bills and stock registers

etc. But the assessee could not produce the alleged parties from whom the purchases were made and confirmations from the said parties. After considering the submissions of the assessee, the AO came to the conclusion that the purchases from these parties as made by the assessee were not genuine. Consequently, the AO calculated the amount of bogus at Rs.3,15,07,341/- for the financial year 2008-09 and added the same to the total income of the assessee. Aggrieved by the order of the AO, the assessee preferred appeal before the Id. CIT(A), who partly allowed the appeal of the assessee by sustaining the addition to the tune of 12.5% of the total bogus purchases thereby sustaining the addition to the tune of Rs.45,76,535/- by observing and holding as under (11.5) :

"11.5 It is seen from the operating part of the decision , the Hon'ble Gujarat High Court has adopted profit estimation rate of 12.5% on an adhoc basis and without considering the rate of sales tax applicable on the concerned commodities Therefore, respectfully following the decision of the Hon'ble Gujarat High Court in the case of Simit P Sheth (supra) the profit rate of 12.5% is applied on the suspected bogus purchases of Rs.3,66,12,285/- and Rs.15,42,64,804/- for assessment years 2009-10 and 2010-11 respectively which works out to Rs.45,76,535/-and Rs.1,92,83 for AY 2009-10 and 2010-11, respectively. Therefore, these amounts of Rs.45,76,535/- and Rs.1,92,83,100/- are confirmed and balance additions are directed to be deleted"

Aggrieved by the order of FAA assessee in appeal before us.

5. We have carefully considered the rival submissions and perused the material placed before us including the impugned orders and case law relied

upon by both the parties. The undisputed facts of the case are that the assessee has availed entries of bogus purchases to the tune of Rs.3,66,12,285/- from three parties which were declared as hawala operators by the Sales Tax Department, Government of Maharashtra. During the course of assessment proceedings, the assessee could not produce confirmations from these three parties nor these parties were traceable at the addresses furnished by the assessee. However, the assessee duly produced bills and vouchers, mode of payment, copies of ledger accounts and corresponding sales bills and stock register etc. The First Appellate Authority after considering the submissions and contentions as raised by the assessee before the Id.CIT(A) partly sustained the addition at the rate of 12.5% of the bogus purchases. Now, the Id. AR contended before us that the assessee is a dealer in Chemical solvent and bulk material which has very low margin and during the year GP of 4.08% as has been shown by the assessee. The AR also stated that the VAT applicable to the assessee is 4% and even if the presumption is drawn that the assessee has saved VAT by purchasing the material from the grey market, a reasonable profit and VAT addition should be made. In the similar cases, the co-ordinate Benches of the Tribunal have been taking a consistent view that some percentage addition ranging from 5% to 12.5% should be made to cover the leakages of revenue depending upon the VAT saved by the assessee by purchasing the goods

from the grey market. Considering the facts and circumstances of the case, we are of the considered view that the gross GP margin in the chemicals solvent as mentioned by the assessee is very low and the assessee has declared 4.08% GP during the year. Moreover, VAT rate applicable to the assessee is 4%. In the present circumstances, we consider a GP of 5% to be reasonable and accordingly direct the AO to apply GP of 5% on the bogus purchases. Accordingly, the order of the Id.CIT(A) is set aside and the AO is directly to apply 5% of bogus purchases. The grounds taken by the assessee is partly allowed.

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6. In this appeal, the Id.CIT(A) applied 12.5% of bogus purchases. The facts of this case are same as discussed above. Accordingly, applying the same formula of VAT and considering low margin in the material, we direct to apply 5% on the amount of bogus purchases. The appeal is partly allowed.

7. In the result, the appeals of the assessee are partly allowed.

Order pronounced in the open court on 25th Oct, 2017.

Sd
(D.T.GARASIA)
Judicial Member

sd
(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai; दिनांक Dated :. 25.10.2017

Sr.PS:SRL:

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,

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