



ITA.No.5181/Mum/2016
Ace Energy Infrastructure 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.5181/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2009-10)

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| Deputy Commissioner Of Income Tax 9(1)(1) Room No.260-A, 2 nd Floor Aaykar Bhavan, M.K.Road Mumbai-400 020 | बनाम/ Vs. | Ace Energy Infrastructure Private Limited 4, Stanburg Estate, Juhu Koliwada, Santacruz(W) Mumbai-400 049 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAGCA-2093-N | | |
| (□ पीलार्थी / Appellant) | : | (प्रत्यर्थी / Respondent) |

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|--------------------|---|---------------------|
| Assessee by | : | Aarthi Sathe ,Ld.AR |
| Revenue by | : | Suman Kumar, Ld. DR |

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|--------------------------------------------------|---|-------------|
| सुनवाई की तारीख / Date of Hearing | : | 31/10/2017 |
| घोषणा की तारीख / Date of Pronouncement | : | 08/11 /2017 |

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by revenue for Assessment Year [AY] 2009-10 assails the order of the Ld. Commissioner of Income-Tax (Appeals)-16 [CIT(A)], Mumbai, *Appeal No. CIT(A)-16/IT-292/DCIT9(1)(1)/2015-16* dated 29/05/2016 *qua* relief provided to assessee against certain *bogus purchases*. The assessment for impugned AY was framed by *Ld. Deputy*



Commissioner of Income Tax 9(1)(1), Mumbai [AO] u/s 143(3) read with Section 147 of the Income Tax Act, 1961 on 25/03/2015.

2.1 Facts leading to the same are that the assessee being *resident corporate assessee* engaged as *civil contractor* was subjected to an assessment u/s 143(3) read with Section 147 for impugned AY on 25/03/2015 at Rs.3,16,77,250/- after addition of certain *bogus purchases* for Rs.88,79,106/-. The original return was *e-filed* on 30/09/2009 at Rs. 2,27,98,140/- which was processed u/s 143(1). The solitary issue involved in the appeal is addition against *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.88,79,106/- from an entity namely *V.M.Udyog*. Consequently, notice u/s 148 dated 28/03/2014 was issued to the assessee which was followed by statutory notices u/s 143(2) and 142(1).

2.3 During assessment proceedings, notice u/s 133(6) was sent to the said supplier to confirm the purchase transactions. However, the same was returned back *un-served* by postal authorities with remarks *left*. Upon confrontation, the assessee contended that the purchases were made through agent and payment was through banking channel and the material was consumed in assessee's business. However, not convinced, Ld. AO concluded that the assessee failed to discharge the onus casted on him to prove the purchases transactions. Finally, treating the same as non-genuine purchases, the same were added to the income of the assessee.



3. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 29/05/2016 where Ld. CIT(A) after appreciating the factual matrix and placing reliance on several judicial pronouncements restricted the additions to 12.5% of *alleged bogus purchases*. Aggrieved, the revenue is in further appeal before us.

4. The Ld. Departmental Representative [DR] relied on the stand of Ld. AO whereas Ld. Counsel for Assessee [AR] asserted that estimation made by Ld. CIT(A) was quite fair and reasonable.

5. 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 /consumption of material since the assessee was engaged in *civil construction*. The sales turnover achieved by the assessee has not been disputed by the revenue and the payments were through banking channels. The purchases were backed by invoices. At the same time, the assessee could not produce any confirmation from the impugned supplier and notice sent u/s 133(6) remained *un-served*, which cast serious doubt on assessee's claim. 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. Therefore, finding the same to be quite fair & reasonable, we dismiss revenue's appeal.

6. Resultantly, the revenue's appeal stands dismissed.

Order pronounced in the open court on 08th November, 2017.



ITA.No.5181/Mum/2016
Ace Energy Infrastructure Private Limited
Assessment Year-2009-10

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

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

मुंबई Mumbai; दिनांक Dated : 08.11.2017
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