



ITA.Nos.5600 &5601/Mum/2015, CO.Nos.245 &246/Mum/2017

Parvez Musa Khan

Assessment Years-2010-2011,2011-2012

आयकर अपीलिय अधिकरण "सी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI MAHAVIR SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.5600 & 5601/Mum/2015
(निर्धारण वर्ष / Assessment Years: 2010-2011 & 2011-12)

Assistant Commissioner Of Income Tax Palghar Circle, Palghar Aaykar Bhavan IT Office BIDCO Road Palghar-401 404	बनाम/ Vs.	Parvez Musa Khan (Prop. Of M/s Aman Street) Survey No.116/1 Shakti Udyog Nagar Manor Road Opp. Jungle Resort Palghar (E) -401 404
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AFMPK-0603-G		
(□ पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

&

C.O. Nos. 245 & 246/2017

[Arising out of ITA No.5600 & 5601/Mum/2015]

(निर्धारण वर्ष / Assessment Years: 2010-2011 & 2011-2012)

Parvez Musa Khan (Prop. Of M/s Aman Street) Survey No.116/1 Shakti Udyog Nagar Manor Road Opp. Jungle Resort Palghar (E) -401 404	बनाम/ Vs.	Assistant Commissioner Of Income Tax Palghar Circle, Palghar Aaykar Bhavan IT Office BIDCO Road Palghar-401 404
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AFMPK-0603-G		
(□ पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Anil Sathe, Ld. AR
Revenue by	:	Rajat Mittal, Ld. DR
सुनवाई की तारीख / Date of Hearing	:	09/10/2017
घोषणा की तारीख /	:	08/11/2017



Date of Pronouncement		
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आदेश / ORDER

Per Bench

1. The captioned appeals by revenue for Assessment Years [AY] 2010-11 & 2011-12 assails separate order of first appellate authority. The assessee has filed cross objections against the same. The registry has note that the cross objections have been filed with a delay of 89 days. Explaining the delay, the assessee has filed condonation request duly supported by affidavit where the delay has been attributed to *bona-fide* belief that the Tribunal's decision of earlier year shall automatically be applied to the impugned Assessment Years. Since, no serious objection is raised by the revenue against the same and keeping in view the quantum of delay, the delay is condoned and we proceed further to decide the appeals on merits.

2. First we take up revenue's appeal ITA No.5600/Mum/2015 & assessee's cross objection CO. No. 245/Mum/2017 for AY 2010-11 which contest the order of Ld. Commissioner of Income-Tax (Appeals)-3 [CIT(A)], Mumbai, *Appeal No. 235-THN/14-15* dated 11/09/2015. The assessment for impugned AY was framed by *Ld. Assistant Commissioner of Income Tax, Palghar Circle u/s 143(3) read with Section 147 of the Income Tax Act, 1961* on 28/03/2014.

3.1 Facts leading to the same are that the assessee being *resident individual* engaged in the business of *trading of iron & steel* under proprietorship concern namely *Aman Steel* was subjected to an assessment u/s 143(3) *read with Section 147* for impugned AY on



28/03/2014 at Rs.1,02,40,630/- after addition of certain *bogus purchases* for Rs.87,15,900/-. The original return was *filed* on 23/09/2010 at Rs.15,24,730/- which was processed u/s 143(1). The solitary issue involved in the appeal is addition against *bogus purchases*.

3.2 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.87,15,900/- from eight such parties. Consequently, notice u/s 148 dated 22/03/2013 was issued to the assessee which was followed by statutory notices u/s 143(2) and 142(1).

3.3 Notice u/s 133(6) issued to *alleged bogus suppliers* to confirm the purchase transactions remained *un-served* by postal authorities. In the meantime, a survey action was carried out on the assessee on 11/02/2013 to verify the records in respect of *bogus purchases* made by the assessee. The assessee was found to be in possession of invoices only but could not substantiate the physical delivery of material with documentary evidences. The Ld. AO also noted various discrepancies in the transportation details provided on the invoices which led the Ld. AO to disbelieve the said purchases and accordingly, the same were added to the income of the assessee.

4. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 11/09/2015 where the Ld. CIT(A) after appreciating the factual matrix and by placing reliance on several judicial pronouncements restricted the impugned additions to



25% of *alleged bogus purchases*. Aggrieved, the revenue is in further appeal before us whereas the assessee, vide his cross objections, *inter-alia*, has pleaded to restrict the same to the extent of *Gross Profit Margin* i.e..6.7% earned by the assessee during the impugned AY.

5. The respective representatives drew our attention to fact that similar issue arose in the case of the assessee in immediately preceding AY 2009-10 and the Tribunal vide ITA No. 5599/M/2015 & CO. No.127/M/2016 order dated 22/09/2016 restricted the impugned additions to *Gross Profit Margin* earned by the assessee. Both the representatives fairly conceded that since a view has already been taken by the bench, the same view may be taken in the matter.

6. We have heard the rival contentions and perused the cited order of the Tribunal. We find that Tribunal, on identical set of facts, in AY 2009-10 has restricted the impugned additions to 6.6% i.e. *Gross Profit Margin* earned by the assessee. There being no change in facts or circumstances, respectfully following the same, we restrict the impugned additions to 6.7% i.e. *Gross Profit Margin* of the assessee in the impugned AY. In other words, the addition is restricted to 6.7% of *alleged bogus purchases* of Rs.87,15,900/- which comes to Rs.5,83,965/-. Resultantly, the revenue's appeal stands dismissed whereas cross objection filed by the assessee stands partly allowed.

7. The assessee, in AY 2011-12, has similarly been saddled with additions on account of *bogus purchases* for Rs.94,90,070/- in an assessment u/s 143(3) *read with Section 147* on 28/03/2014. The same has been restricted to 25% against which the revenue is in appeal



before us whereas the assessee has filed cross objections against the same. Since facts and circumstances are similar, taking the same view, we restrict the same to 5.8% of *alleged bogus purchases* which comes to Rs.5,50,424/-. Resultantly, the revenue's appeal stands dismissed whereas cross objection filed by the assessee stands partly allowed.

8. Finally, ITA Nos. 5600 & 5601/Mum/2015 stands dismissed whereas CO. No.245 & 246/Mum/2017 stands partly allowed.

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

Sd/-
(Mahavir Singh)
न्यायिक सदस्य / **Judicial Member**

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

मुंबई Mumbai; दिनांक Dated : .10.2017
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