

**IN THE INCOME TAX APPELLATE TRIBUNAL "L" BENCH,
MUMBAI**

BEFORE SHRI RAJENDRA, AM & SHRI SANDEEP GOSAIN, JM

आयकरअपीलसं./I.T.A. No. 7462/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2009-10)

JVM Steel Pvt. Ltd. C-37, Highway Apartment Eastern Express Highway Sion East, Mumbai.	बनाम/ Vs.	ITO 6(3)(3) R. No. 524 5 th Floor, Aayakar Bhavan, M. K. Road, Mumbai
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आयकरअपीलसं./I.T.A. No. 6933/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2009-10)

ITO 6(3)(3) R. No. 524 5 th Floor, Aayakar Bhavan, M. K. Road, Mumbai	बनाम/ Vs.	JVM Steel Pvt. Ltd. C-37, Highway Apartment Eastern Express Highway Sion East, Mumbai.
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAACJ1919N		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri M. V. Rajguru
प्रत्यर्थीकीओरसे/Respondentby	:	Shri Bhupendra Shah

सुनवाईकीतारीख/ Date of Hearing	:	20/09/2017
घोषणाकीतारीख/ Date of Pronouncement	:	22/09/2017

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

1. The present two Appeals have been filed by the assessee as well as revenue against the order of Commissioner of Income Tax (Appeals)- 12, Mumbai, dated 01.09.16 for A.Y. 2009-10.
2. Since the issues raised in these two appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order.

I.T.A. No. 7462/Mum/2016 (AY 2009-10)

3. First of all we take up assessee's appeal in ITA No. 7462/Mum/2016 (AY 2009-10).
4. As per the facts of the present case, the assessee filed its return of income for the year under consideration declaring total income at Rs. NIL under the normal provisions and book profit of Rs. 10,18,930/- u/s 115JB of the I.T. Act on 29.10.09. Subsequently the assessment was reopened after recording reasons for reopening and after serving statutory notices and seeking reply of the assessee. The assessment order u/s 143(3) r.w.w. 147 of I.T. Act was passed thereby

disallowing the purchases shown by the assessee to the tune of R.s 3,69,43,823 u/s 69C being unexplained purchases and added back the same to the total income of the assessee.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties partly allowed the appeal of the assessee.

Now before us, the assessee has preferred the appeal by raising the above grounds.

Ground No. 1

5. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the order passed by AO u/s 143(3) r.w.s. 147 of the I.T. Act.

We have heard Ld. Counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. As per the facts of the case, the assessment was reopened after recording the reasons and accordingly notice u/s 148 was served on the assessee. In response to the said notice, the assessee vide letter dated 30.08.14 requested the AO to treat the return filed on

26.02.09 as returned filed in compliance to notice u/s 148 of the I.T. Act. The reasons for reopening for provided.

The reopening proceeding were initiated on close scrutiny of the details received from the DGIT(Inv.), Mumbai regarding bogus purchase transactions identified by Sales Tax Department. The information received from the Sales Tax Department as well as subsequent cancellation of TIN no. of the parties from whom the assessee had made purchases by the Maharashtra VAT authorities as appearing on the website of Maharashtra Govt. is construed as “**tangible material**” which gave AO the reasons to believe for the purpose of reopening that the income of the assessee has escaped assessment. What is important at the time of information of belief by the AO regarding the escapement or under assessment of income is sufficiency of the reasons for reopening of the assessment and not its accuracy that cannot be questioned at that time. Our above view gets strength from the judgment of Hon’ble Supreme Court in the case of **S. Narayappa Vrs. CIT (1967) 63 ITR 219 (SC)**. Hence in our view, the order of reopening is valid and needs no interference. Hence this ground raised by the assessee is **dismissed**.

Ground No. 2 & 3 filed by the assessee and Ground No. 1 & 2 of the appeal filed by the revenue.

6. Since all the grounds raised by the assessee as well as revenue relates to challenging the order of Ld. CIT(A) in restricting the disallowance @ 12.5 % of the bogus purchases, therefore we thought it fit to dispose of the same through this present consolidated order.

7. We have heard Ld. Counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that Ld. CIT(A) has not controverted any of the findings recorded by AO while making additions on account of bogus purchases, however Ld. CIT(A) has simply acceded the submissions of the assessee regarding estimating the reasonable amount of profit for the purposes of disallowance on account of bogus purchases. The AO had issued notices u/s 133(6) of the I.T. Act to all the parties. It was incumbent upon the assessee to prove the suppliers were genuine suppliers and they really supplied material to the assessee and assessee had in fact really made payments by cheques to these vary parties. Such a burden had not been discharged by the assessee with very strong and clinching evidence. The AO has categorically its

finding that the assessee has failed to produce any of the suppliers even in spite of opportunities being granted to him. Thus in these circumstances, the genuineness of the transactions remain unproved. The Ld. AR has relied upon the order of Coordinate Bench in ITA No. 1321/M/16 for AY 2009-10, 1322/M/16 for AY 2010-11 and 1323/M/16 for AY 2011-12 titled ACIT Vrs M/s Steel Line(India). However, the facts contained in the above ITA's are different and the factual position in the present case is different. The above order passed by the Co-ordinate Bench are thus not applicable to the facts of the present case.

Therefore considering the peculiar facts and circumstances of the present case and while relying upon the following judgments:- **1) CIT vs Bholanath Poly Fab Ltd. (2013) 355 ITR 290 (Guj). (HC)**, **2. CIT v Simit D, Sheth (2013) 356 ITR 451 (Guj)-(HC)** and **3. CIT vs. Sanjay Oil Cake Industries (2009) 316 ITR 274 (Guj) (1C)** and taking into consideration the facts of the present case, and to account for the profit element embedded in these purchase transactions to factorize profit earned by assessee against purchase of material in the *grey market* and undue benefit of VAT against bogus purchases, we

are of the considered view that restricting the additions @ 12.5% of purchases by Ld. CIT(A) is unreasonable. The ends of justice would be met in case the additions are restricted @ 8 % of bogus purchases. Consequently orders passed by Ld. CIT(A) are set aside. Hence we direct the AO to restrict the additions to the extent of 8% of the bogus purchases made from the parties. Accordingly these ground raised by the assessee as well as revenue stands decided as indicated above.

Ground No. 4

This ground raised by the assessee is consequential in nature, hence in view of our above findings needs no specific adjudication.

I.T.A. No. 6933/Mum/2016 (AY 2009-10)

8. Since, we have already decided the issue of disallowance on account of bogus purchases in the case of assessee in ITA No. 7642/Mum/2016 for AY 2009-10 and restricted the addition to 8%, therefore, based on our findings in the case of assessee, we decide this appeal accordingly.

9. In the net result, the appeal filed by the assessee is **allowed** and appeal filed by the revenue stands **dismissed**.

Order pronounced in the open court on 22nd Sept., 2017

Sd/-

Sd/-

(Rajendra)

(Sandeep Gosain)

लेखासदस्य / Accountant Member न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 22.09.2017

Sr. PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/BY ORDER,

**उप/सहायकपंजीकार(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**