

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

**BEFORE SHRI RAJENDRA, AM &  
SHRI SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 6241/Mum/2016,  
(निर्धारणवर्ष / Assessment Year: 2009-10)

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| ITO 20(2)(4)<br>R. No. 220, Piramal<br>Chambers, Lalbaug, Mumbai | <b>बनाम/<br/>Vs.</b> | Nisrin Mohd. Deesawal<br>602, 6 <sup>th</sup> floor, Ketan<br>Apts, 22 Bevedre Rd.<br>Mazgaon, Mumbai |
| स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AKVPD6997J                 |                      |   |
| (अपीलार्थी/Appellant)  | :                    | (प्रत्यर्थी / Respondent)   |

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|--|---|--------------------|
| अपीलार्थीकीओरसे/ <b>Appellant by</b>   | : | Shri M. V. Rajguru |
| प्रत्यर्थीकीओरसे/ <b>Respondent by</b> | : | None               |

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| सुनवाईकीतारीख/<br><b>Date of Hearing</b>       | : | 20/09/2017 |
| घोषणाकीतारीख /<br><b>Date of Pronouncement</b> | : | 22/09/2017 |

आदेश / ORDER

**Per Sandeep Gosain, Judicial Member:**

The present Appeal filed by the revenue is against the order of Commissioner of Income Tax (Appeals)-32, Mumbai dated 15.07.16 for AY 2009-10.

2. At the very outset, it is noticed that none has appeared on behalf of assessee and even no application for adjournment was moved. On the other hand Ld. DR is present in the court and is ready with arguments. Therefore we have decided to proceed with the hearing of the case ex-parte with the assistance of the Ld. DR and the material on record.

3. 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. 4,87,545/- on 20.09.09. The original assessment was completed u/s 143(3) on 30.12.11 determining total income at Rs. 6,11,173/-. Subsequently, the Ld. CIT-17, Mumbai passed order u/s 263 dated 31.03.14 wherein the original order was set aside with a directed to the AO to complete the assessment after obtaining evidence of genuineness of purchases. The assessee accepted the order u/s 263 of the I.T. Act by not filing an appeal. The AO after carrying out necessary inquiries/investigation disallowed 12.5% of the purchases made from 23 parties by holding the same as bogus while following certain judicial

pronouncements and consequently an addition of Rs. 50,45,338 was made.

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 revenue has preferred the appeal by raising the above grounds.

4. All the effective grounds raised by the revenue relates to challenging the order of Ld. CIT(A) in restricting the disallowance @ 2.09 % of the net purchases, therefore we thought it fit to dispose of the same through the present consolidated order.

5. We have heard Ld. DR 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) after considering the facts of the present case as well as orders passed by AO had reached to the conclusion that the assessee was not in a position to prove the existence of the supplier and thus rightly concluded that the

assessee had made cash purchases from the other parties which were not recorded in the books. At the same time Ld. CIT(A) has also rightly concluded that entire purchases from bogus parties cannot be added as bogus and what needs to be taxed is the profit element embedded in such transactions. The Ld. CIT(A) has also considered the fact that the disallowance should be restricted to the GP rate of the assessee during the year which is 2.09%.

We have gone through the facts of the present case and we are of the view that the assessee himself admitted that these purchases were sourced through broker which goes to show that assessee was not in a position to discharge his initial onus of proving the genuineness of the purchase. In such circumstances 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 @ 2.09% 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 this ground raised by the revenue is **partly allowed**.

6. In the net result, the appeal filed by the revenue stands **partly allowed**.

*Order pronounced in the open court on 22<sup>nd</sup> 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**