



ITA.No.131/Mum/2016
Om Developers
Assessment Year-2010-11

आयकर अपीलीय अधिकरण “सी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI

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

आयकर अपील सं./I.T.A. No.131/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2010-11)

Om Developers Office No.14, Mahavir Centre Sector No.17, Vashi Navi Mumbai-400 705	बनाम/ Vs.	Deputy Commissioner Of Income Tax 15(3) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAAF0-9862-A		
(□ पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Devendra Jain,Ld. AR
Revenue by	:	Rajat Mittal, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	06/12/2017
घोषणा की तारीख / Date of Pronouncement	:	10/01/2018

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2010-11 assails the order of the Ld. Commissioner of Income-Tax (Appeals)-26 CIT(A)], Mumbai, *Appeal No. CIT(A)-26/IT/771/13-14* dated 16/10/2015 *qua* confirmation of certain additions on account of *alleged bogus purchases*. The assessment for impugned AY was framed by Ld. Deputy Commissioner of Income Tax-15(3), Mumbai [AO] u/s 143(3) of



the Income Tax Act, 1961 on 20/03/2013. The sole ground raised in the appeal reads as under:-

The Ld. CIT(A) has erred in restricting the disallowance of alleged bogus purchase made by the A.O only to the extent of Rs.27,89,100/- (i.e Gross Profit @ 23.42% of the alleged bogus purchases). The addition retained to the tune of RS.27,89,100/- may please be deleted..

2.1 Facts leading to the same are that the assessee being *resident firm* engaged in the business of *civil construction as builder & developer* was assessed u/s 143(3) at Rs.1,48,22,370/- after certain additions / disallowances as against returned income of Rs.26,10,200/- e-filed by the assessee on 28/09/2010.

2.2 Pursuant to receipt of certain information from *Sales Tax Authorities* regarding dealers indulging in providing accommodation bills, it was noted that the assessee stood beneficiary of such bogus purchase bills from two such parties aggregating to Rs.1,19,09,038/-. Notices issued u/s 133(6) to these parties to confirm the transactions returned back undelivered by the postal authorities with the remarks *not known / refused*. The assessee, in support, produced purchase bills, delivery challans etc. However, not convinced, Ld. AO, placing reliance on several judicial pronouncements, treated the said purchases as *bogus purchases* and added the same to the income of the assessee.

3. Aggrieved, the assessee contested the same with partial success before Ld.CIT(A) vide impugned order dated 16/10/2015 where Ld. CIT(A) after considering the factual matrix restricted the disallowance to 23.42% of *alleged bogus purchases*, being Gross Profit reflected by the assessee. Aggrieved, the assessee is in further appeal before us.



4. The Ld. Counsel for Assessee [AR] reiterated the contentions that the assessee was in possession of primary purchase documents including delivery challans and weigh bridge statements and therefore, impugned additions were not justified. Our attention is also drawn to higher *Gross Profit Rate* being reflected by the assessee in the impugned AY. Per *contra*, Ld. DR drew our attention to the fact that the assessee could not produce any of the party for confirmation of account and notices u/s 133(6) remained *un-served*.

5. We have carefully heard the rival contentions and perused relevant material on record. We find that the assessee is in possession of primary purchase documents and already reflected high *Gross Profit Rate* of 23.42%. We are of the considered opinion that there could be no sale without purchase /consumption of material considering the nature of assessee's business. The sales turnover achieved by the assessee has not been disputed by the revenue. At the same time, the assessee could not produce any confirmation from any of the impugned supplier and could not produce any party for confirmation, which cast a 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 *Value Added Tax [VAT]* against such bogus purchases, which Ld. CIT(A) has rightly done. However, on factual matrix, we find the rate of 23.42% to be on the higher side and therefore, estimate the additions @8% of *alleged bogus purchases* of Rs.1,19,09,038/- which comes to



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Rs.9,52,723/-. The order of first appellate authority stands modified to that extent.

6. Resultantly, the assessee's appeal stands partly allowed.

Order pronounced in the open court on 10th January,2018.

Sd/-

(Joginder Singh)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 10.01.2018 .

Sr.PS:- Thirumalesh

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

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