



ITA No. 4043 & 4447/Mum/2016
Vinodkumar Santlal Bhojania
Assessment Year 2010-11

आयकर अपीलीय 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. 4043/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2010-11)

Vinodkumar Santlal Bhojania 302, Kamla Hub, Plot No.53 Near Costa Coffee Restaurant, JVPD Scheme, Juhu Vile Parle(W), Mumbai – 49	बनाम/ Vs.	Income Tax Officer 5(1)(1) IT Main Office Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAHPB-9402-A		
(आपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपील सं./I.T.A. No. 4447/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2010-11)

Income Tax Officer 19(3)(5) 2 nd Floor, Matru Mandir Tardeo Road Mumbai – 400 007	बनाम/ Vs.	Vinodkumar Santlal Bhojania CompAir Equipments Co. 2, Aman Chambers 1 st Floor, 113 Mama Parmanand Marg Mumbai – 400 004
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAHPB-9402-A		
(आपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Satish Mody, Ld. AR
Revenue by	:	Rajat Mittal, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	25/01/2018
घोषणा की तारीख / Date of Pronouncement	:	31/01/2018



आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. These are cross appeals for Assessment Year [AY] 2010-11 which contest the order of Ld. Commissioner of Income Tax (Appeals)-10 [CIT(A)], Mumbai, Appeal No. *CIT(A)-10/ITO-5(1)(1)/98/2013-14* dated *29/03/2016*. The assessment for impugned AY was framed by Ld. *Income Tax Officer 5(1)(1), Mumbai [AO] u/s 143(3) of the Income Tax Act, 1961* on *20/03/2013*. First, we take up revenue's appeal ITA No.4447/Mum/2016 wherein following effective grounds have been raised:-

1. On the facts and circumstances of the case and in law, whether the Ld. CIT(A) was justified in allowing the commission paid to assessee relative.
2. On the facts and circumstances of the case and in law, whether Ld. CIT(A) was justified in sustaining the addition to the extent of only 12.5% of the total purchases.
3. The appellant prays that the order of the Learned CIT(A) on the above ground be set aside and that of the AO be restored

2.1 Facts, in brief, are that the assessee being *resident individual* engaged in the business of *trading of engineering parts* under proprietorship concern namely *Comp Air Equipment Co.* was assessed at Rs.91.49 Lacs after certain adjustments / disallowances as against returned income of Rs.20.69 Lacs filed by the assessee on *30/09/2010*. The issue under revenue's appeal is allowance of certain commission payments and certain addition against *alleged bogus purchases*.

2.2 During assessment proceedings, it was noted that the assessee paid commission of Rs.1,38,900/- to his son namely *Rishabh Bhojania* which was disallowed for want of genuineness.

2.3 The second addition pertained to addition on account of *alleged bogus purchases*. Pursuant to receipt of certain information from *DGIT*



(*investigation*), it was noted that the assessee stood beneficiary of bogus purchase bills of Rs.66,57,258/- from an entity namely *Akshat Enterprises*. Notice issued u/s 133(6) to the said party to confirm the transactions returned back undelivered by the postal authorities with the remarks *left*. The assessee expressed inability to produce the said party which led the Ld. AO to treat the entire purchases as non-genuine and consequently, the same was added to the income of the assessee.

3. The assessee contested both the additions with partial success before Ld. CIT(A) vide impugned order dated 29/03/2016 where the disallowance of commission was deleted by since the assessee produced *ledger extracts, confirmation and TDS details etc.* The addition on account of *alleged bogus purchases* was restricted to 12.5% by Ld. CIT(A) by following the stand of its predecessor in assessee's own case for AY 2009-10. Aggrieved, the revenue is in further appeal before us.

4. The Ld. Departmental Representative [DR] place reliance on the stand of Ld. AO whereas Ld. Authorised Representative [AR] for assessee contended that the stand of Ld. CIT(A) was quite fair and reasonable upon factual matrix.

5. Upon perusal, we concur with the stand of Ld. AR that the order of Ld. first appellate authority require no interference on our part since the commission paid to the son was duly backed by *confirmation, TDS details etc.* Further, the estimation of 12.5% against *alleged bogus purchases* was quite fair & reasonable since additions could not be made merely on conjectures or surmises particularly when the assessee was in possession of primary purchase documents. Further, the turnover achieved by the assessee has not been disputed by the revenue and the



assessee was engaged in trading activities which could not be carried out without purchase of material. Therefore, 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. Hence, on factual matrix, we see no reason to interfere with the stand of Ld. CIT(A) and therefore, dismiss revenue's appeal.

Assessee's Appeal ITA No. 4043/Mum/2016

6. The sole issue involved in assessee's appeal is addition of Rs.2 Lacs on account of *personal expenses* and an addition of Rs.0.80 Lacs on account of *notional interest*.

7. The addition of Rs.2 Lacs comprised of Rs.1.80 Lacs, being maintenance of residential flat situated at *Raheja Orchid* and Rs.0.20 Lacs on account of certain advance to an entity namely *Orbitz Leisure Travels* and the same has been disallowed u/s 37. The addition on account of notional interest was made @10% since assessee utilized interest bearing loans towards grant of interest free loans to entities namely *Air Drive Equipment Co. Pvt. Ltd. & Mohan Bhojania* aggregating to Rs.8 Lacs. The same, upon confirmation by Ld. CIT(A), have been contested before us.

8. The Ld. AR contended that the said expenditure of Rs.2 Lacs was never claimed as expenditure and therefore, the question of disallowance u/s 37 do not arise. Similarly, Ld. AR contended that own capital was sufficient to grant the interest free loans and therefore,



addition on account of notional interest was not justified. The Ld. DR placed reliance on the stand of lower authorities.

9. Upon perusal of proprietor's capital account as placed on record, we find that the assessee has debited the same, by way of transfer, an amount of Rs.1,84,425/- on 31/03/2010 and the same represents payments made to *Raheja Orchid Residents*. The closing balance of this account tallies with the summarized capital account of the assessee as per books of accounts. This gives strength to the arguments of Ld. AR that the said expenses have directly been debited to the personal account and not claimed as expenditure and therefore, the question of disallowance of the same u/s 37 do not arise. Hence, we delete the same. Further, it is observed that the assessee's opening as well as closing capital was sufficient to cover the interest free loans of Rs.8 Lacs granted by the assessee. The revenue has not established the nexus of interest bearing loans obtained by the assessee vis-à-vis interest free loans granted by the assessee and therefore, drawing presumption in assessee's favour, we delete the same. Resultantly, the assessee's appeal stands allowed.

Conclusion

10. In nutshell, revenue's appeal stands dismissed whereas assessee's appeal stands allowed.

Order pronounced in the open court on 31st January, 2018



ITA No. 4043 & 4447/Mum/2016
Vinodkumar Santlal Bhojania
Assessment Year 2010-11

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

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

मुंबई Mumbai; दिनांक Dated : 31.01.2018
Sr.PS:- Thirumalesh

आदेश की प्रतिलिपि ँ त्रेषित/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