



ITANos.4399-4400,3940-41/Mum/2016
Tirupati Commodities Impex Private Limited
Assessment Years 2010-11 & 2011-12

आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“H” 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. Nos. 4399-4400/Mum/2016
(निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12)

Tirupati Commodities Impex Private Limited [Earlier Known as Tirupati Iron and Impex Pvt.Ltd] Office No.901,9 th Floor Lodha Supremus Senapati Bapat Marg Lower Parel Mumbai-400 012	बनाम/ Vs.	Deputy Commissioner Of Income-Tax Central Circle-6 Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACCT-3064-G		
(□ पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर □ पील सं./I.T.A. Nos. 3940-3941/Mum/2016
(निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12)

Deputy Commissioner of Income-Tax Central Circle 1(4) Room No.902, 9 th Floor, Old CGO Building, M.K.Road Churchgate Mumbai-400 020	बनाम/ Vs.	Tirupati Commodities Impex Private Limited [Earlier Known as Tirupati Iron and Impex Pvt.Ltd] Office No.901,9 th Floor Lodha Supremus Senapati Bapat Marg Lower Parel Mumbai-400 012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACCT-3064-G		
(□ पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Prateek Jain, Ld. AR
Revenue by	:	Saurabh Kumar Rai, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	21/02/2018
घोषणा की तारीख / Date of Pronouncement	:	28/02/2018



आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. These are cross-appeals for Assessment Years [AY] 2010-11 & 2011-12 which contest separate orders of first appellate authority *qua* confirmation of certain addition on account of *alleged bogus purchases*. Since common issues are involved, we dispose-off the same by way of this common order for the sake of convenience & brevity. First we take up assessee's appeal ITA No.4399/Mum/2016 for AY 2010-11 arising out of order of Ld. Commissioner of Income Tax (Appeals)-47, Mumbai [CIT(A)], *Appeal No. CIT(A)-47/AP.159/2014-15* dated 18/03/2016. The assessment for impugned AY was framed by Ld. Deputy Commissioner of Income Tax-Central Circle 6, Mumbai u/s 143(3) *read with Section 153A* of the Income Tax Act, 1961 on 27/03/2014.

2.1 Briefly stated the assessee being *resident corporate assessee* engaged in the business of *trading of steal items* was assessed for impugned AY u/s 153A pursuant to search action u/s 132(1) on *Tirupati Group of Companies* on 29/04/2011 and the assessee being one of the main concerns floated by common key management personnel / directors was also covered in the same. The group offered undisclosed additional income of Rs. 4 Crore before investigation team against non-verifiable purchases, unaccounted investments in immovable properties & Jewellery. The assessee offered a sum of Rs.25 Lacs on account of non-verifiable expenses and purchases. Pursuant to notice u/s 153A dated 09/05/2012, the assessee filed return of income at Rs.83,59,347/-.



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2.2 During assessment proceedings it was noted that the assessee dealt in *trading of MS steel pipes, MS joints, RSJ polls angles, channels and TMT bars* and its main customers were from telecom infra and power transmissions sectors. It was noted that the assessee obtained *bogus purchase bills* from a person namely *Pramod Kumar Singh* and his various concerns without actually buying any goods. The assessee defended the purchases made by him. However, after considering the statements of stated person, other key persons including mediator namely *Om Prakash Singh* as recorded by the revenue during search / survey proceedings, Ld. AO came to the conclusion that the assessee booked *bogus purchases* to reduce the profits with a view to evade the taxes. The amount of *alleged bogus purchases* during the impugned AY was Rs.11,17,60,349/- against which Ld. AO worked out *peak credit balance* of Rs.7,33,05,306/-. After adjusting the additional income of Rs.25 Lacs offered by the assessee in the return of income, the net addition, thus made, came to Rs.7,08,05,306/-. The Ld. AO made another addition of 1% of these *bogus purchases* to account for commission paid by the assessee to the mediators to obtain these *bogus bills* which resulted into another addition of Rs.11,17,603/-.

3. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 18/03/2016, where Ld. CIT(A) after considering the factual matrix and various judicial pronouncements restricted the estimated additions to 4.12% of peak purchases and altogether deleted estimated addition on account of commission in the following manner:-



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- 5.2.12 *In the present case, as discussed, the AO has accepted the sales made by the appellant. The purchase-sale correlation has not been controverted by the AO. No discrepancy in stock has been pointed out. The fact that payments made for the purchases are routed through banking channels is not disputed. The documentation provided contains sufficient reference to the particulars of the sale party. Delivery challans are produced. Thus the purchases in question cannot be held bogus. However, as discussed earlier, it is well known that the primary impetus behind availing of such bogus bills was to save on the G.P rate. The average G.P. rate of the appellant for the past 3 years is 4.12%. Thus on considering the facts on record the disallowance made by the AO is upheld to the extent of 4.12% of the peak purchases, and the grounds raised by the party are **partly-allowed**.*
- 5.3 *In Ground **No.3**, the appellant has challenged the addition of Rs.11,17,603/- on account of commission expenses. In the impugned order, the AO noted that for availing such bogus bills, the appellant would have incurred commission expense @1% and observed that the fact that such transactions involved payment and receipt of commission was confirmed by the statements of various parties recorded during the search. Considering that the rate of commission in this trade ranged from 0.5% to 2.0%, the AO estimated commission @1% added back an amount of RS.11,17,603/-. In appeal it has been argued that the said addition is based purely on estimate without any evidence of any such expense having been incurred by the appellant. I have considered the issue at hand. As in the preceding grounds it has been decided that the purchases are question have not been shown to be bogus, the addition on account of estimated commission expenses is consequently deleted. Accordingly, the additions on account of commission expenses is deleted and the ground raised by the appellant is **allowed**.*

Aggrieved aforesaid, the assessee as well as the revenue is in further appeal before us.

4. The Ld. Authorised Representative for assessee [AR] pleaded for further relief in the matter whereas Ld. Departmental Representative [DR] pointed out that the factual matrix demands higher additions.

5. We have carefully heard the rival contentions and perused relevant material on record. We are of the considered opinion that there could be no sale without purchase of material since the assessee was a trading concern. The assessee was in possession of primary purchase documents and the payments were through banking channels. At the same time, the assessee could not produce any of the suppliers before lower authorities and substantiate the delivery of material with cogent



evidences. Further, the assessee reflected purchases from these entities, all of which were controlled by the same group and the search / survey action clearly revealed that the said group was engaged in providing accommodation bills to the interested person. All these factors 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 VAT against *alleged* bogus purchases, which Ld. CIT(A) has rightly done. However, we find that the assessee had made gross purchases of Rs.11,17,60,349/- from *alleged bogus suppliers*. The Ld. AO has worked out peak credit balance of Rs.7,33,05,306/- against the same. The Ld. first appellate authority has restricted the addition to 4.12%, being average *Gross profit Rate [GP rate]* of past three years. This rate, in our opinion, has to be applied on Gross purchases and not on peak purchases. Further, considering the fact that the assessee procured bills from certain mediators and Ld. CIT(A) has deleted the addition on account of estimated commission being paid by the assessee, the normal GP rate of past three years could not be applied as such to the facts of the case. Therefore, after considering totality of facts & nature of assessee's business, while confirming the reasoning of Ld. CIT(A), we modify the same by estimating the additions @5% of *alleged bogus purchases* of Rs.11,17,60,349/- which comes to Rs.55,88,017/-. After adjusting the additional income of Rs.25 Lacs offered by the assessee in the return of income, the net additions as sustained by us comes to Rs.30,88,017/-.



The Ld. CIT(A) has already deleted estimated addition on account of commission which stands confirmed by us.

6. Resultantly, the assessee's appeal stands dismissed whereas revenue's appeal stands partly allowed in terms of our above order.

Cross Appeals for Assessment Year 2011-12

7. The assessee, in AY 2011-12, broadly on similar facts, has reflected income of Rs.1,56,68,990/- in return of income pursuant to notice u/s 153A. The Ld. AO, after due inquiry, noted that the assessee, in this year, made *bogus purchases* as well as *bogus sales* amounting to Rs.22,51,72,903/- & Rs.22,56,75,225/- respectively and reflected meager Gross Profit of Rs.5,02,322/- against the same. The Ld. AO estimated the addition on these transactions @6% of *alleged bogus* purchases which came to Rs.1,35,10,374/-. Since, the assessee had already offered additional income of Rs.1.15 crores in the return of income, the net addition, thus made, came to Rs.20,10,274/-. The Ld. AO has made another addition of 4% to account for wrong VAT credit claimed on the *alleged bogus purchases* which came to Rs.90,06,916/-. The Ld. CIT(A) has confirmed the addition of Rs.20,10,274/- but deleted estimated addition of Rs.90,06,916/- on account of wrong VAT credit. Aggrieved, the assessee as well as revenue is in further appeal before us with similar arguments. Since the broad facts and circumstances are similar except for minor variations, taking the same stand and keeping in view the meager profit reflected by the assessee against *alleged bogus purchase / sale* transactions, we confirm the stand of Ld. CIT(A) finding the same to be fair & reasonable.



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8. Resultantly, the assessee's appeal as well as revenue's appeal stands dismissed.

Conclusion

9. The revenue's appeal ITA No.3940/Mum/2016 stands partly allowed whereas all the other three appeals stands dismissed.

Order pronounced in the open court on 28th February, 2018

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 28. 02.2018

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**