



ITA Nos.405/Mum/2016 & ITA 5742/Mum/2015  
Nisha Mayur Kamdar  
Assessment Year- 2009-2010

**आयकर अपीलीय अधिकरण “जे” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“J” BENCH, MUMBAI**

श्री शक्तिजीत दे, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI SAKTIJIT DEY, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No.405/Mum/2016  
(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Income Tax Officer 32(2)(4)</b> Room No. 306, 3 <sup>rd</sup> Floor C-11, Pratyakshar Kar Bhawan BKC, Bandra, Mumbai-400 051	<b>बनाम/</b> Vs.	<b>Nisha Mayur Kamdar</b> 705, Shashi Apartment Devidas Lane, Borivali (W) Mumbai – 400 092
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>APDPK-8142-F</b>		
(अपीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

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आयकर अपील सं./I.T.A. No.5742/Mum/2015  
(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Nisha Mayur Kamdar</b> 705, Shashi Apartment Devidas Lane, Borivali (W) Mumbai – 400 092	<b>बनाम/</b> Vs.	<b>Income Tax Officer 32(2)(4)</b> Room No. 306, 3 <sup>rd</sup> Floor C-11, Pratyakshar Kar Bhawan BKC, Bandra, Mumbai-400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>APDPK-8142-F</b>		
(अपीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Anil Thakrar, Ld. AR
<b>Revenue by</b>	:	Aarju Garodia, Ld. Sr. AR

सुनवाई की तारीख / <b>Date of Hearing</b>	:	26/02/2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	28/02/2018



## आदेश / ORDER

### Per Manoj Kumar Aggarwal (Accountant Member)

1. These are cross appeal for Assessment Year [AY] 2009-10 which contest stand of Ld. Commissioner of Income-Tax (Appeals)-44 [CIT(A)], Mumbai, *Appeal No.CIT(A)-44/ITO.32(2)(4)/ITA-134/2014-15* dated 01/12/2015 *qua* addition on account of *alleged bogus purchases*. The assessment for impugned AY was framed by *Ld. Income Tax Officer-32(2)(4) [AO] u/s 143(3) read with Section 147 of the Income Tax Act, 1961* on 27/02/2015 wherein the assessee has been saddled with addition of Rs.1,38,57,521/- on account of certain *alleged bogus purchases*.

2.1 Facts leading to the same are that the assessee being *resident individual* engaged in the business of *trading of building material* under proprietary concern namely *N.M.Realtors* was subjected to reassessment proceedings for impugned AY vide issuance of notice u/s 148 dated 11/03/2014 which was followed by statutory notices u/s 143(2) and 142(1). The original return of income was filed by the assessee at Rs.2,83,740/- which was processed u/s 143(1).

2.2 The reassessment proceedings were initiated upon receipt of certain information from *Sales Tax Department, Maharashtra & DGIT (Investigation)* regarding dealers indulging in *bogus purchase bills* and it was noted that the assessee stood beneficiary of such *bogus purchase bills* to the tune of Rs.1,38,57,521/- from ten such parties. The assessee defended the purchases made by him but notices issued u/s 133(6) to confirm the transactions remained *un-served* with remarks like *left / not*



known. After considering assessee's submissions, documentary evidences and certain judicial pronouncements, Ld. AO added the same to the income of the assessee u/s 69C.

3. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 23/03/2015 where Ld. CIT(A) restricted the disallowance to 6.54% by making following observations:-

*It has been held in the case of M/s Nikunj Enterprises 372 ITR 69 (Bom) by the Hon'ble Bombay High Court that merely because the suppliers have not appeared before the Assessing Officer or the CIT(A), one cannot conclude that the purchases were not made by the respondent-assessee. Further it has been held in the case of Saraswathi Oil Traders Vs. CIT 254 ITR 259 (Supreme Court) that when the sales have not been doubted then there was no question to doubt the purchases and the addition should have been made only to the extent of gross profit. To this extent I am in agreement with the appellate that if the appellant has fulfilled its onus of making the payments by cheque and has supplied the address of the sellers, then it cannot be presumed that the suppliers were bogus simply because the sellers were not found at the given addresses. However, at the same time, it cannot be said that the information provided by the sales tax Dept. should not be taken cognizance by the A.O. Therefore, after considering the totality of facts and after following the ratio of Saraswathi Oil Traders Vs. CIT (SC) cited supra, I am of the opinion that it is the profit element in the total component in dispute which needs to be added to the income of the appellant. The total amount which is being treated as bogus by the A.O. is Rs.1,38,57,521/-. The appellant has shown a gross profit rate of 6.54%. Thus 6.54% of Rs.1,38,57,521/- which is Rs.9,06,282/- is taken as profit of the appellant on purchases that are not fully and properly explained. Addition of **Rs.9,06,282/-** is accordingly confirmed our of an addition of Rs.1,38,57,521/- and the balance is deleted. Ground of Appeal Nos. 1 & 2 are therefore partly allowed.*

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

4. The Ld. Departmental Representative [DR] submitted that the addition was on lower side whereas Ld. Authorised Representative for assessee [AR] pleaded for some more relief.

5. After considering rival contentions, we find no reason to interfere with the stand of Ld. CIT(A) since the assessee was engaged in trading activities and could not achieve the sales turnover without purchase of



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material. The turnover of the assessee has not been doubted by the revenue and the assessee is in possession of primary purchase documents & further, the payments are through banking channels. At the same time, the assessee could not produce any single party to confirm the transactions and notices issued u/s 133(6) were returned back *unserved* 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 VAT against *alleged* bogus purchases, which Ld.CIT(A) has rightly done. Therefore, finding the same quite fair and reasonable, we dismiss both the appeals.

6. Resultantly, both the appeals stands dismissed.

*Order pronounced in the open court on 28<sup>th</sup> February, 2018.*

Sd/-

**(Saktijit Dey)**

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