



ITA.No.1455/Mum/2018
A.B Exports
Assessment Year- 2010-11

आयकर अपीलिय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” 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.1455/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2010-11)

A.B. Exports Chitrakut Building Malabar Hill Mumbai – 400 006	बनाम/ Vs.	Income Tax Officer Ward-19(1)(1) 2 nd Floor, Matru Mandir Tardeo Road Mumbai- 400 007
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AALFA-8367-R		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Mrugakshi K. Joshi, Ld.AR
Revenue by	:	N. Hemalatha, Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	23/05/2018
घोषणा की तारीख / Date of Pronouncement	:	23/05/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2010-11 contest the order of Ld. Commissioner of Income-Tax (Appeals)-51 [CIT(A)], Mumbai, *Appeal No.CIT(A)-51/IT-104/19(1)(1)/17-18 dated 01/01/2018 qua* confirmation of certain additions on account of *alleged bogus purchases*. The assessment for impugned AY was framed



by Ld. Income Tax Officer 19(1)(1), Mumbai [AO]u/s 143(3) read with section 147 of the Income Tax Act,1961 on 21/03/2016 wherein the income of the assessee has been determined at Rs.46,820/- after certain additions as against 'Nil' income filed by the assessee on 03/01/2012 which was processed u/s 143(1). The issue under appeal is quantum addition against certain *alleged bogus purchases*. During impugned AY, the assessee was engaged in the business of *export of diamonds*.

2.1 The reassessment proceedings were initiated upon receipt of certain information from investigation wing of the department that the assessee made suspicious purchases of Rs.5,85,200/- from an entity namely *Maniprabha Impex Private Limited*. The said entity was part of *Rajendra Jain / Sanjay Chowdary / Dharmichand Group*, who was subjected to search / survey operations by the department on 03/10/2013, wherein it was found that the said group, through web of numerous entities, was engaged in providing accommodation entries of *bogus purchase/sales/Loans & advances* to many parties. Consequently notice u/s 148 dated 23/03/2015 was issued to the assessee which was followed by statutory notices u/s 143 (2) & 142(1).

2.2 The assessee, while defending the purchases made by him, *inter-alia* submitted copies of invoices, bank statement evidencing payment to the said entity, confirmation letter and stock register etc. However, not convinced, Ld. AO noted that all the concern of the said group were not doing any actual business but only being operated as conduits for issuing accommodation entries. The statement made during search operation was also considered. The assessee failed to produce the said party for confirmation of purchases. Finally, not convinced with



assessee's submissions, Ld.AO estimated the additions against the above purchases @8% which resulted into impugned additions of Rs.46816/- in the hands of the assessee.

3. Aggrieved, the assessee contested the same on legal ground as well as on merits with partial success before Ld. CIT(A) vide impugned order dated 01/01/2018 wherein Ld. CIT(A) while upholding the invocation of reassessment proceedings, provided partial relief to the assessee in the following manner:-

*6.6. Now the issue to be adjudicated is what is the reasonable profit percentage to be adopted for computing the profits arising from the alleged hawala purchases. It is pertinent to mention that the CBDT through instruction No.2/08 dated 22/02/2008 has revised the rate of profit margin from 8% to 6% in respect of gems and jewellery business. Thus, it can be seen that the Income Tax Department consider 6% of profit margin to be reasonable for the business of Gems & Jewellery. However this margin of 6% is reasonable for an assessee which is not indulging in hawala purchases. It has been noted by the Hon'ble Gujarat High Court in the case of **Simit P Sheth (supra)** that the margins in respect of hawala purchases are much higher due to savings on account of evasion of various government levies. Therefore, it will be appropriate if the reasonable profit margin arising to the assessee on account of the alleged hawala purchases is adopted of 8%. However, the AO while making the addition on account of the additional profit margins arising on the hawala purchases should reduce the profit margins already shown by the assessee in its books in respect of the said hawala purchases from the said profit margin computed by adopting profit margin of 8% for the alleged hawala purchases. **Accordingly, Ground No.2 of the appeal is partly allowed.***

Still aggrieved, the assessee is in further appeal before us.

4. The Ld. Authorized Representative for assessee, *Ms. Mrugakshi Joshi*, while drawing our attention to the documents placed in the *paper-book* contested the additions as sustained by lower authorities which were controverted by Ld. Departmental Representative, *Ms.N.Hemalatha*.

5. We have carefully considered the rival contentions and perused relevant material on record including cited case laws. So far as the legality of reassessment proceedings are concerned, we find that



original return filed by the assessee has been processed u/s 143(1) and therefore, the only requirement to be fulfilled to initiate the reassessment proceedings was that Ld. AO *had reasons to believe that certain income has escaped assessment*. In the present case, the reopening has been initiated upon receipt of concrete information from investigation wing which suggested escapement of income in the hands of the assessee. Therefore, we concur with the stand of Ld. first appellate authority in upholding the reassessment proceedings and dismiss this ground of assessee's appeal.

6. So far as the merits of the case are concerned, the main stress of Ld. AR's argument is that the purchases were made by the assessee from the said entity and the same was accounted for in the books of accounts and the supplier, duly confirmed the same. It has also been submitted that no opportunity of cross examination has been provided to the assessee and therefore, the additions were not justified. We are of the considered opinion that there could be no sale without purchase of material keeping in view the assessee's nature of business. The turnover achieved by the assessee has not been disputed by the revenue and the payments were through banking channels. The assessee reconciled quantitative details also to some extent. However, at the same time, the assessee reflected purchases from an entity which was being controlled by the above stated *tainted Group*. The search / survey action on the said group on 03/10/2013 by *DGIT (Inv.)* revealed that the said group consisting of numerous business entities, numbering more than 70, was engaged in providing *accommodation purchases bills & accommodation loans & advances*. It was found out that the



employees / their relatives etc. of the said group were merely name lending directors / partners / proprietors of numerous concerns which were operating under the control of said group. The statements of concerned persons revealed that the firms were indulging in accommodation bills without doing any actual business and those persons had no knowledge about the business being carried out by the said concerns. In such a scenario, the submissions of the Ld. AR could not be accepted since the initial allowance of substantiating the purchases squarely lie on the assessee and the same, in our opinion, has remain un-discharged. Therefore, in such a scenario, the action of Ld. CIT(A) in estimating the impugned additions @8% with benefit of declared profit was quite justified and do not call for any further interference from our side in any manner. So far as the reliance of Ld. AR on certain judicial pronouncements is concerned, we find that the same have been rendered on peculiar facts of each case and therefore, could not be relied upon blindly without considering the factual matrix of each case. This ground of assessee's appeal stand dismissed.

7. Resultantly, the appeal filed by the assessee stand dismissed.

Order pronounced in the open court on 23rd May, 2018

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**



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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**