



ITA.No.6296/Mum/2016
Ana Designs Private Limited
Assessment Year-2009-10

आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

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

आयकर अपील सं./I.T.A. No.6296/Mum/2016
(निर्धारण वर्ष / Assessment Year:2009-10)

Ana Designs Private Limited 4B-1, Takshila Apartment Mahakali Caves Road Andheri(E), Mumbai-400 093	बनाम/ Vs.	Deputy Commissioner of Income Tax-9(1)(2) Aaykar Bhavan, M.K.Road Mumbai- 400 020
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No.		AAECA-8160-C
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	None
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] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-16 [CIT(A)], Mumbai, *Appeal No. CIT(A)-16/IT-186/DCIT 9(1)(2)/2015-16 dated 17/08/2016 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-9(1)(2)*,



Mumbai [AO] u/s 143(3) read with section 147 of the Income Tax Act, 1961 on 19/03/2015 wherein the income of the assessee has been determined at Rs.501.50 Lacs after certain additions as against returned income of Rs.451.72 Lacs *e-filed* by the assessee on 27/09/2009 which was processed u/s 143(1). The issue under appeal is quantum addition against certain *alleged bogus purchases*. None has appeared for assessee despite notice and no valid adjournment application is on record. Therefore, left with no option, we proceed to dispose-off the same on the basis of material available on record and after hearing Ld. Departmental Representative [DR].

2.1 The reassessment proceedings were initiated upon receipt of certain information from *Sales Tax Department, Maharashtra* 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.49,78,341/- from eight such entities, the details of which has been extracted in *para-1.2 of* quantum assessment order. Consequently, statutory notice u/s 148 dated 26/03/2014 was issued to the assessee which was followed by notices u/s 143(2) and 142(1). During impugned AY, the assessee being *corporate entity* was engaged in the business of carrying on *turnkey project as contractor*.

2.2 The assessee defended the purchases made by him. However, notices issued u/s 133(6) to all the entities elicited no satisfactory response. The assessee expressed inability to produce any of the parties. The perusal of the Bank statement of few suppliers revealed that huge cash was withdrawn from the same from time to time. The statement made by the suppliers before sales tax authority was also



perused. Further, the assessee failed to substantiate delivery of goods and it was noted that no quantitative information of the material was provided by the assessee. All these factors laid the Ld. AO to treat these purchases as bogus purchases and consequently the same were added to the income of the assessee.

3. Aggrieved, the assessee contested the same on legal grounds as well as on merits with partial success before Ld. CIT(A) vide impugned order dated 17/08/2016, wherein Ld. CIT(A), while upholding the reassessment proceedings, restricted the impugned additions to 12.5% of alleged bogus purchases by observing as under:

*7.1.31 As narrated earlier, the Ld. AO. In this case has held that the parties from whom the purchases were made by the appellant were found to be bogus and that is the reason for which it was not produced during the assessment proceedings. Not having doubted the consumption/sales, the motive behind obtaining bogus bills thus, appears to be inflation of purchase price so as to suppress true profits. Considering the facts of the case as well as the various case laws cited (supra), I estimate the suppressed profit to the extent of 12.5% of the purchases made from the bogus entities, as the suppressed profit element embedded in such purchases. This estimation is in addition to the GP shown by the appellant. Accordingly, **this ground of appeal is partly allowed.***

Still aggrieved, the assessee is in further appeal before us. The Ld. Department Representative *Ms. N.Hemalatha* submitted that adequate relief has already been granted by Ld. First appellate authority.

4. So far as the ground of validity of reassessment proceeding is concerned, we find that the original return was processed u/s 143(1) and the only requirement to initiate reassessment proceedings in a such case was that Ld. AO had reasons to believe that certain income escaped assessment. The tangible material in the shape of information from *Sales Tax Authority* came into the position of Ld. AO which suggested escapement of income in the hands of the assessee.



Therefore, the statutory conditions as envisaged by law to initiate reassessment proceedings were fulfilled and jurisdiction was validly assumed by Ld. AO. We concur with the stand of Ld. first Appellate Authority in this regard and dismiss this ground of assessee's appeal.

5. So far as the merits of the case are concerned, we are of the considered opinion that keeping in view the assessee's nature of business, the consumption of material was required and the business activities could not be carried out without purchase of actual material. The turnover achieved by the assessee has not been disputed by the revenue and the payments were through banking channels. The assessee was in possession of primary purchases documents. At the same time, the assessee could not conclusively substantiate the delivery of material and failed to produce any of the party for confirmation of accounts. Notices issued u/s 133(6) elicited no satisfactory response and the assessee failed to produce quantitative details of materials. 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 earned by assessee against possible purchase of material in the *grey market* and undue benefit of VAT against such bogus purchases, which Ld. CIT (A) has rightly done. Therefore, finding the same in order, we dismiss this ground of assessee's appeal.

6. Resultantly, the assessee's appeal stands dismissed.

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



Sd/- (Saktijit Dey) Sd/- (Manoj Kumar Aggarwal)
न्यायिक सदस्य / **Judicial Member** लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 23.05.2018
Sr.PS:-Thirumalesh

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