

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1226/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

Dy. Commissioner of Income Tax,  
Panvel Circle, Panvel

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Satyam Developers,  
Shop No. 4 & 5, Satyam Arcade,  
Plot No. 26, Sector 21, Kamothe,  
Navi Mumbai - 410210

PAN : AAXFS3242F

.....प्रत्यर्थी / Respondent

प्रत्याक्षेप सं. / CO No.32/PUN/2018

निर्धारण वर्ष / Assessment Year : 2010-11

M/s. Satyam Developers,  
Shop No. 4 & 5, Satyam Arcade,  
Plot No. 26, Sector 21, Kamothe,  
Navi Mumbai - 410210

PAN : AAXFS3242F

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Dy. Commissioner of Income Tax,  
Panvel Circle, Panvel

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sharad Shah  
Revenue by : Shri Achal Sharma

सुनवाई की तारीख / Date of Hearing : 24-05-2018

घोषणा की तारीख / Date of Pronouncement : 25-05-2018

**आदेश / ORDER****PER VIKAS AWASTHY, JM :**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-I, Thane dated 27-03-2015 for assessment year 2010-11. The assessee has filed cross objections (CO) supporting the order of Commissioner of Income Tax (Appeals).

2. The brief facts of the case as emanating from records are : The assessee is a civil contractor, builder and developer. The assessee filed his return of income for the impugned assessment year on 24-09-2010 declaring total income of Rs.33,04,060/-. The case of the assessee was selected for scrutiny. Accordingly, statutory notice u/s. 143(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was issued to the assessee on 27-09-2011 and the same was duly served. During the course of scrutiny assessment proceedings, the Assessing Officer observed that the assessee had made purchases from the dealers whose names were appearing in the list of Hawala dealers circulated by the State Sales Tax Department. The Assessing Officer held that the purchases made by the assessee from suspicious dealers are bogus and thus made addition of Rs.2,62,94,453/- as unexplained expenditure.

Aggrieved by the assessment order dated 21-03-2013, the assessee filed appeal before the Commissioner of Income Tax (Appeals). During the First Appellate proceedings, the assessee did not press appeal in respect of disallowance amounting to Rs.1,76,51,232/-. However, in respect of balance amount of Rs.86,43,221/-, the ld. AR pointed that the purchases were made from four parties namely : (i) Rameshwar Steel Co.

(Rs.50,05,111/-), (ii) Star Ceramics (Rs.7,77,289/-), (iii) R.K. Enterprises (Rs.26,10,988/-), and (iv) Ratnadeep Electrical & Hardware Stores (Rs.2,49,833/-). The assessee furnished confirmation letters from Rameshwar Steel Co. and Star Ceramics. The Commissioner of Income Tax (Appeals) by placing reliance on the assessment order in the case of M/s. Shiv Shraddha Developers for assessment year 2010-11 wherein the three parties i.e. Rameshwar Steel Co., Star Ceramics and R.K. Enterprises were held to be genuine, deleted the addition of Rs.86,43,221/-. Against the findings of Commissioner of Income Tax (Appeals) the Revenue is in appeal.

3. Shri Achal Sharma representing the Department submitted that the Commissioner of Income Tax (Appeals) has erred in deleting addition of Rs.86,43,221/-. The assessee has failed to show genuineness of the transactions with Rameshwar Steel Co., Star Ceramics, R.K. Enterprises and Ratnadeep Electrical & Hardware Stores. The Commissioner of Income Tax (Appeals) has granted relief merely by placing reliance on the assessment order of M/s. Shiv Shraddha Developers. No opportunity was given to the Assessing Officer to verify the genuineness of these parties. The assessee has not furnished any detail of transportation of goods, therefore, no relief should have been granted to the assessee.

4. On the other hand Shri Sharad Shah appearing on behalf of the assessee vehemently defended the order of Commissioner of Income Tax (Appeals). The ld. AR submitted that the Department has already given clean chit to the aforesaid three parties in assessment proceedings in the case of M/s. Shiv Shraddha Developers for the assessment year 2010-11. The additions have been made on the ground that the assessee has made

bogus purchases from Hawala dealers. Once, the Department has accepted that the parties are genuine, no addition in respect of purchases made from such parties should be suspected. The assessee has furnished confirmation letters from Rameshwar Steel Co. and Star Ceramics. The ld. AR however fairly admitted that the assessee could not produce Ratnadeep Electrical & Hardware Stores nor any confirmation has been received from the said party.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The solitary issue raised in the appeal by the Department is against deleting addition of Rs.86,43,221/- by the Commissioner of Income Tax (Appeals) alleged to be bogus purchases. During assessment proceedings, the Assessing Officer observed that the assessee had made purchases from 21 parties. The substantial number of parties (17) figured in the list of suspicious Hawala dealers. The name of the four parties i.e. Rameshwar Steel Co., Star Ceramics, R.K. Enterprises and Ratnadeep Electrical & Hardware Stores did not form part of the list of Hawala dealers circulated by the Sales Tax Department. The Commissioner of Income Tax (Appeals) granted relief to the assessee in respect of above said four parties. The Commissioner of Income Tax (Appeals) observed that in the case of M/s. Shiv Shraddha Developers, the Assessing Officer had accepted three parties i.e. Rameshwar Steel Co., Star Ceramics and R.K. Enterprises as genuine parties and purchases made from them were accepted. Following parity of reasoning, the Commissioner of Income Tax (Appeals) granted relief to the assessee.

6. We find that the assessee had filed confirmations regarding transactions entered into with Rameshwar Steel Co. and Star Ceramics.

The confirmations are at pages 1 to 6 of the paper book. Though, no confirmation has been received from R.K. Enterprises at the same time, the name of said dealer does not appear in the list of Hawala dealers. Thus, the transactions with the parties which have already been cleared by the Department from cloud of suspicion of being Hawala dealers has been rightly deleted by the Commissioner of Income Tax (Appeals).

As regards, transactions with Ratnadeep Electrical & Hardware Stores amounting to Rs.2,49,833/- is concerned, we find that no material has been placed on record by the assessee to substantiate that the transactions with the said party was actually carried out. The assessee neither filed any confirmation nor there is any trail of procurement of goods. Thus, we are of view that the transactions amounting to Rs.2,49,833/- with Ratnadeep Electrical & Hardware Stores deserves to be disallowed. Accordingly, we modify the impugned order and restrict the relief granted to the assessee to Rs.83,93,388/-.

7. In the result, the appeal by the Revenue is partly allowed in the terms aforesaid.

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8. The assessee has filed cross objections with the delay of 308 days. The assessee has filed an application supported by an affidavit citing reasons for delay in filing of cross objections beyond the period of limitation. The reason given by the assessee for delay in filing of the cross objections is that the appeal papers were handed over to one Mr. Nagin Patel, Income Tax Practitioner and he failed to handed over the papers to the Chartered Accountant to whom appeal was entrusted for defending the assessee before the Tribunal. A perusal of the affidavit does not inspire

confidence in the reasons given by assessee for condoning inordinate delay of 308 days in filing of cross objections. The assessee has failed to discharge his onus in explaining delay in filing of cross objections. The reason given by assessee is vague and sans details. Accordingly, the cross objections filed by the assessee are dismissed in limine, being barred by limitation.

9. In the result, the appeal of the Revenue is partly allowed and the cross objections filed by the assessee are dismissed.

Order pronounced on Friday, the 25<sup>th</sup> day of May, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 25<sup>th</sup> May, 2018

RK

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-I, Thane
4. आयकर आयुक्त / The CIT-I, Thane
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune