



ITA.No.4725/Mum/2015
Aslam Ibrahim Malim
Assessment Year- 2010-11

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.4725/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2010-11)

Aslam Ibrahim Malim 140/4, B.F. Wadia Compound, Opp. Reay Road Railway Stn. Reay Road, Mumbai-400 010	बनाम/ Vs.	Income Tax Officer-15(3)(3) 6 th Floor, Asher I.T. Park Road No.16Z Wagle Industrial Estate Thane- 400 604
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AMMPM-7901-Q		
(पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	None
Revenue by	:	N. Hemalatha, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	24/05/2018
घोषणा की तारीख / Date of Pronouncement	:	22/06/2018

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)-17 [CIT(A)], Mumbai, *Appeal No. CIT(A)-26/IT-69/15(3)(3)/13-14 dated 29/05/2015 qua* confirmation of certain additions on account of *alleged bogus purchases*. The assessment for impugned AY was framed



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by Ld. Income Tax Officer-15(3)(3), Mumbai [AO] u/s 143(3) of the Income Tax Act,1961 on 28/03/2013 wherein the income of the assessee has been determined at Rs.66.87 Lacs after certain additions / disallowances as against returned income of Rs.6.69 Lacs *e-filed* by the assessee on 12/10/2010. None has appeared for assessee despite being provided with several opportunities of being heard and no valid adjournment application is on record. 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, *Ms. N.Hemalatha*.

2. Briefly stated, the assessee being *resident individual* engaged in the business of *installation & repair of Air Conditioners and resale of Air Conditioner parts* under proprietorship concern namely *temperature & Engineering Works* was subjected to scrutiny assessment u/s 143(3) wherein it was noted that the assessee made aggregate purchase of Rs.59,66,347/- from two suspicious entities namely *Rupani & Co. and Sagar Steel Traders*. The notices issued u/s 133(6) to the said entities elicited no satisfactory response. Accordingly, the assessee was asked to substantiate the purchases made from these two parties. The assessee, while defending the purchases, submitted copies of invoices and submitted that payments were through banking channels. However, not convinced, Ld. AO treated the same as *bogus purchases* and added the same to the income of the assessee.

3. Aggrieved, the assessee contested the same without partial success before Ld. CIT(A) vide impugned order dated 29/05/2015 wherein Ld. CIT(A) considered the various submissions made by assessee and judicial pronouncements on the subject matter. Finally,



considering the Gross Profit Rate of 12.5% already reflected by the assessee, Ld. CIT(A) directed the Ld. AO to increase the Gross Profit Ratio in respect of the bogus purchases to 16.5% as against 12.5% shown by the assessee in respect of other purchases. The Ld. CIT(A) further opined that since the assessee purchased the goods from grey market, the payment made to *hawala parties* represented unexplained cash of the assessee, the peak credit of which was liable to be added to the income of the assessee. Accordingly, Ld. CIT(A) worked out peak credit of Rs.45.51 Lacs against the same and proposed addition thereof as unexplained expenditure u/s 69C. The Ld. CIT(A) also proposed another addition @2% to account for commission against these purchases which worked out to Rs.1,19,326/-. Aggrieved, the assessee is in further appeal before us. The Ld. Departmental Representative has placed reliance on the stand of lower authorities.

4. Upon careful consideration, the approach of Ld. first appellate authority in proposing additions from various angles was not justified since the nature of assessee's business required purchase / consumption of material and there could be no sale without actual purchase of goods. The assessee already reflected *Net profit Rate of 6.53%* on sale turnover of Rs.2.27 Crores. 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 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. All these factors cast a serious doubt on



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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. Therefore, on factual matrix, a composite addition @12.5% of *bogus purchase*, in our opinion, would be a reasonable estimation of additions. Hence, we estimate the same @12.5% of *alleged bogus purchases* of Rs. 59,66,347/- which comes to Rs.7,45,793/-. Accordingly the addition to the extent of Rs.7,45,793/- stand confirmed whereas other additions, in this regard, stand deleted.

5. Resultantly, the assessee's appeal stand partly allowed.

Order pronounced in the open court on 22nd June,2018

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 22.06.2018
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