

**IN THE INCOME TAX APPELLATE TRIBUNAL "B"  
BENCH, MUMBAI**

**BEFORE SHRI G. S. PANNU, AM &  
SHRI SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 7081 & 7080/Mum/2016  
(निर्धारणवर्ष / Assessment Year: 2009-10&2011-12)

ACIT -19(1) Room No. 203, 2 <sup>nd</sup> Floor, MatruMandir, Tardeo Road, Mumbai-400007	<b>बनाम/ Vs.</b>	Shri Ganpatraj A. Sanghvi 135/141, 1 <sup>st</sup> Floor, Room No. 23, Guru Rajendra House, 6 <sup>th</sup> Kumbharwada, Mumbai-400004.
स्थायीलेखासं ./जीआइआरसं ./PAN No. AMXPS1466M		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri Suman Kumar
प्रत्यर्थीकीओरसे/ <b>Respondentby</b>	:	Shri N. M. Porwal

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	27.02.18
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	28.02.18

आदेश / ORDER

**Per Sandeep Gosain, Judicial Member:**

The present two Appeals have been filed by the revenue against the order of Commissioner of Income Tax (Appeals)-23, Mumbai, dated 23.09.16 for A.Y. 2009-10 and 2011-12 respectively.

2. Since the issues raised in these two appeals are identical, therefore, for the sake of convenience, these two appeals are clubbed, heard and disposed of by this consolidated order.

**I.T.A. No. 7081/Mum/2016 (AY 2009-10)**

3. First of all we take up revenue's appeal in I.T.A. No. 7081/Mum/2016 (AY 2009-10) on the grounds mentioned herein below:-

*1. Whether on the facts and in the circumstances of the case and in law, the ld.CIT(A) erred in deleting the addition of Rs. 5,86,470/- made by the AO as bogus purchases.*

*2. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in ignoring the facts and evidence collected by the AO during the re-assessment proceedings.*

*3. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

4. The brief facts of the case are that the assessee is an individual engaged in the business of trading in ferrous and non-ferrous metal under the proprietary concern by name M/s Gururaj Metal. The assessee filed his return of income for the assessment year 2009-10 on 29-09-2009, declaring total income of ! 33,88,804/-. Original assessment was completed u/s 143(3) of the Act on 28-12-2011, assessing the total income at Rs. 2,08,58,870/-. While completing assessment, AO made the major addition of Rs. 1,74,01,436/- on account of alleged bogus purchases from five parties. Subsequently information was received by the AO from the DGIT(Inv.), Mumbai, that there was a scam unearthed by Sales Tax Department regarding issue of hawala bills and accommodation entries by several parties in Mumbai, availed by several assesses, to inflate their purchases or expenses and thereby reducing their tax liabilities. As per the said information, the assessee also found indulged in bogus purchases with five parties, to the tune of Rs. 1,61,73,888/-. On the basis of the said information, the assessment was reopened by the AO by issuing notice u/s 148 of the Act on 18-03-2014. Assessment u/s

143(3) r.w.s 147 of the Act was passed on 20-03-2015, assessing the total income at Rs. 2,14,45,340/-.

Notice u/s 143(2) was issued on 19-09-2014 along with copy of reason recorded. In view of restructuring fresh notices u/s 143(2) and 142(1) was issued on 21-01-2015. As per the information received from DGIT(Inv.), Mumbai, assessee has taken accommodation entries on account of purchase from 5 parties. On verification of the details furnished, it is noticed that out of the five parties while passing the original assessment order u/s 143(3) of the Act, the addition was already made on account of bogus purchases from 4 parties i.e. M/s. Montex Industries - 47,90,548/-, M/s VirajSsteel& Alloys Rs. 60,67,360/-, M/s. Rohan Steel Impex - 22,43,764/- and M/s. Shivam Metal Industries - 24,85,746/-. Hence, while completing re-assessment u/s 143(3) r.w.s. 147 of the Act, AO made addition of 5,86,470/- u/s 69C of the Act as bogus purchases from M/s. Alcobex Metal Industries which was not covered in the original assessment, applying the same arguments while making original assessment and also considering the fact that the addition made in the original assessment was confirmed by Ld. CIT(A).

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties partly allowed the appeal of the assessee and deleted the additions.

Now before us, the revenue has preferred the present appeal by raising the above grounds.

5. The solitary ground raised by the revenue relates to challenging the order of Ld. CIT(A) in deleting the addition of Rs. 5,86,470/- made by the AO as bogus purchases.

6. At the very outset, Ld. AR appearing on behalf of the assessee submitted before us that the present case is fully covered by the order of Hon'ble ITAT in ITA No. ITA No. 2826/Mum/13 for AY 2009-10 in assessee's own case wherein the identical grounds raised in the present appeal have already been decided by Hon'ble ITAT on merits.

7. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the

orders passed by revenue authorities. We find that the identical grounds raised in the present appeal have already been decided by Hon'ble ITAT in ITA No. 2826/Mum/13 for AY 2009-10 in assessee's own case on merits and this facts is also contained in the orders passed by Ld. CIT(A).The Ld. CIT(A) has dealt with the above grounds raised by the revenue in para no. 8 of its order. The operative portion of the order of Ld. CIT(A) is contained in para no. 8.1 to 8.2 of its order and the same is reproduced below:-

*8.1 Per Contra, the appellant apart from the other arguments made in the written submissions stated that the additions made by the AO u/s 143(3) of the Act for the A.Y. 2009-10 in his own case were deleted by the Hon'ble Income Tax Appellate Tribunal "G" Bench, Mumbai. Appellant has also enclosed a copy of the order of the Hon'ble Tribunal. The relevant para of the said order is reproduced as under:*

*"Be that it may, another important factor the bank account copies collected by the assessing officer shows that the assessee had made the payments to the above*

*said parties by way of account payee cheques. Thus, it is seen that the transactions have been routed through the bank accounts. Further, it is not the case of the assessing officer that the assessee has indulged in accounting of bogus purchases. When the assessee submitted that he could not have effected the sales without making corresponding purchases, the AO has taken the view that the assessee could have effected purchases in the grey market, which conclusion is, in fact, not supported by any material. Under this impression only, the AO has further expressed the view that the assessee would have purchased the materials by paying cash thus violating the provisions of sec. 40A(3) of the Act, which is again based on only surmises. In the absence of any material to support the said view, we are unable to agree with the view taken by the tax authorities that the purchases amount is liable to be disallowed u/s 40A(3) of the Act. On the same impression only, the AO has expressed the view in the remand report that the purchases amount is also liable to usses.sedEy's 69C of the Act as the source of purchases were net provcd Again the said conclusion is based upon only surmises, which could not be sustained. Thus, it is seen that the AO has accepted the fact that the quantity details of purchases and sales have been reconciled the assessee. Further, various*

*case law relied upon by the assessee also supports his case. Under p. these set of facts, we are of the view that the Ld. CIT(A) was not justified in confirming the disallowance of purchases. Accordingly, we set aside the order of Ld. CIT(A) on this issue and direct the AO to delete the disallowance of purchases.'*

8.2 AO considered the addition based on the reasoning given in the original assessment passed u/s 143(3) of the Act, and Hon'ble Tribunal has deleted the addition made for the reasons stated above. There is no change in the facts and circumstances of the case as the same assessment year is involved in the present appeal also. Therefore, respectfully following the Hon'ble TTAT decision in the appellant's own case for the same year, AO is directed to delete the addition of 5,86,470/- made from M/s Alcobex Metal Industries and the appeal against order u/s 143(3) r.w.s. 147 of the Act on this ground is allowed. The addition considered is only 5,86,470/- whereas from the demand notice enclosed it is noticed that the demand raised is 1,09,59,980/-. This demand is raised because the AO not considered the relief given by the ITAT on the other four purchases. When it is pointed out by the appellant through a rectification petition, AO considered the same and rectified the mistake by passing an order u/s 154 of the Act on 30-04-2015. In view of the same the

*present demand outstanding is not the amount mentioned in the appeal.*

After having gone through the facts of the present case as well as considering the orders passed by the revenue authorities and submissions made by both the parties, we find that the present case is fully covered by the order of Hon'ble ITAT in assessee's own case for AY 2009-10, wherein the similar additions made by the AO were deleted. The Ld. CIT(A) has also recorded the said fact while deleting the additions made by the AO.

The Ld. CIT(A) has correctly appreciated the facts of the present case and has rightly concluded that there is no change in the facts and circumstances of the case as for the same assessment year, the Hon'ble ITAT has deleted the additions by recording the reasons stated in the said order. Therefore, Ld. CIT(A) while following the decision of the coordinate bench of Hon'ble ITAT in ITA No. 2826/Mum/13 for AY 2009-10 in

assessee's own case, had directed the AO to delete the additions of Rs. 5,86,470/- made from Alcobex Metal Industries.

Apart from above, Ld. DR has not been demonstrated any change in circumstances or any other reason to rebut the findings recorded by Ld. CIT(A), therefore we see no reasons to interfere into or deviate from the findings recorded by the Ld. CIT (A) as the same are based on the orders passed by Hon'ble ITAT. Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, these grounds raised by the revenue stands **dismissed**.

**ITA No. 7080/Mum/2013 (AY 2011-12)**

8. Now we take up revenue's appeal in ITA No. 7080/Mum/2013 for AY 2011-12. Since we have already decided the similar grounds of appeal in ITA No. 7081/Mum/2013 for AY 2009-10 on merits. Therefore, following our own decision in ITA No. 7081/Mum/13, we apply the same findings in the present appeal in order to maintain judicial consistency which is applicable mutatis mutandis.

9. In the net result, both the appeals filed by the revenue stands **dismissed**.

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

*Sd/-*  
(G. S. Pannu) *Sd/-*  
(Sandeep Gosain)  
लेखासदस्य / Accountant Member न्यायिकसदस्य / Judicial Member  
मुंबई Mumbai; दिनांक Dated : 28.02.2018  
Sr.PS. Dhananjay

**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**