

**आयकर अपीलीय अधिकरण “D” न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री जी. मंजुनाथ लेखा सदस्य के समक्ष ।

**BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM**

**आयकर अपील सं./ ITA No. 3332/Mum/2016**

(निर्धारण वर्ष / Assessment Year 2011-12)

The Income Tax Officer-1(1)-(2), Room No.534/579, Aayakar Bhavan, M.K. Road, Mumbai-400 020	Vs.	M/s Dosti Realty Ltd. Lawrence & Mayo House, 1 <sup>st</sup> floor, 276, Dr. D.N. Road, Fort, Mumbai-400 001
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
PAN No. <b>AACCD7714K</b>		

**Revenue by** : Shri Ram Tiwari, DR

**Assessee by** : Shri Dr. K Shivaram, AR

**Date of hearing:** 22-05-2018 **Date of pronouncement :** 13-06-2018

**आदेश / ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-2, Thane [in short CIT(A)], in appeal No. CIT(A)-2/IT/57/2014-15 dated 11.02.2016. The Assessment was framed by the ITO, Circle-1(1)(2), Mumbai (in short 'ITO') for the A.Y. 2011-12 vide order dated 31.03.2014 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the addition of bogus / unproved purchase made by AO under section 69C of the Act amounting to Rs. 1,81,01,412/-. The Revenue has also raised the issue without prejudice to the above issue that the addition made by invoking the provisions of section 40A(3) of the Act. For this Revenue has raised the following ground: -

*1(a). "Whether on the facts and in the circumstances of the case, and in law the Id. CIT(A) erred deleting the additions of Rs. 1,81,01,412/- made towards unproved and unexplained expenditure within the meaning of provisions of section 69C of the IT Act."*

*Without prejudice to the above, alternate ground is proposed as under*

*1(b). "Whether on the facts and in the circumstances of the case and in law, the UI. CIT(A) erred deleting the additions of Rs. 1,81,01,412/- made u/s. 40A(3) of the Act by the Assessing Officer in respect of the unproved purchases which is without prejudice to the proposed addition made u/s. 69C in respect of the non- genuineness purchases which has been deleted by the Ld. CIT(A) and restricting the addition to Rs. 7,24,0561- being 4% of Rs. 1,81,01,4121- equivalent to MI/AT rate."*

*2. "Whether on the facts and in the circumstances of the case and in Law, the CIT(A) is correct in negating the rejection of books of account by the Assessing Officer in light of the cogent reasons mentioned by the assessing officer."*



3. Briefly stated facts are that the AO received information from DGIT investigation Mumbai, who carried out the survey under section 133A of the Act on 21.11.2012 on the business premises of M/s Deven Ashwin Sangvi, Prop. M/s Devdhar Steel, that the assessee is one of the beneficiaries of bogus bill issued by parties. During the course of survey the statement was recorded under section 133A of the Act, wherein he admitted that he has entered into transaction of sale and purchase i.e. issuing bogus bills with the assessee company. He admitted that he has maintained transportation receipts, weighing slips, loading/ unloading receipts, delivery challans or another document to prove the delivery of goods to the assessee. The assessee has claimed that these purchases from this party is accounted for in the construction costs of the project of the assessee. The assessee disclosed the total purchase from this party at Rs. 1,81,01,412/- in its books of accounts. The AO required the assessee to explain these purchases but he was not able to prove and accordingly, the AO disallowed the same by drawing following conclusion.

*“5.6 In view of the above stated facts, findings and legalities involving the issues the following conclusions are drawn:*

*a) The amount of purchases/expenses claimed to have made from the above party being the entry provider in the books of assessee amounting to Rs.1,81,01,412/- is unproved and unexplained .expenditure within the meaning of provisions of section 69C/69/37(1) of the IT Act.*

*b) The amount of purchases/ expenses claimed to have made from the above party from the entry provider in the books of assessee amounting to Rs.1,81,01,412/- is inadmissible as expenditure*



*within the meaning of provisions of section 40A(3) & 40A(3A) of the LT Act.*

*(c) Undisclosed profit on the purchases amounting to Rs.7,24,056/- is taxable in the hands of assessee by adopting the disclosed GP @ 4% being the suppressed profit equivalent to MVAT rate as stated above.”*

Aggrieved, assessee preferred the appeal before CIT(A).

4. The CIT(A) restricted the disallowance of bogus purchases at 4% by observing as under: -

“ ...

*Respectfully following the Jurisdictional decision of Mumbai Tribunal in the case of ITO vs. Deepak Popatlal Gala 2959/Mum/2014 dated 28.11.2014 and in the case of Ramesh Kumar & Co. Vs. ACIT 21(1) (ITA No. 2959/M/2014 dated 29.11.2014, and also respectfully following the Hon'ble High Court Mumbai decision in the case of R.W. Promotions P. Ltd. Vs. ACIT 1489 of 2013, I find the addition of ₹ 1,81,01,412/- made by the AO is not sustainable and hence deleted. However, in fitness of things, I restrict the addition of ₹ 7,24,056/- being 4% of ₹ 1,81,01,412/- equivalent to MVAT rate which is not paid by the said party being suppressed profits. Accordingly, this ground of appeal is party allowed....”*

Aggrieved now, Revenue is in appeal before Tribunal.



5. We have heard the rival contentions and gone through the facts and circumstances of the case. The learned Counsel for the assessee stated that the assessee has made payments by account payee cheques, produced invoices and also shown consumption of the material purchase in the construction project. According to the assessee, the entire payment is made by cheque and accordingly, neither section 69C of the Act nor section 40A (3) of the Act can be invoked. The learned Counsel for the assessee requested that a reasonable estimate can be made. The learned Counsel for the assessee filed written submission and vide Para 9 of the submission he requested as under: -

*“9. Without prejudice to above, addition cannot exceed to 12% of alleged bogus purchase after giving credit of 4% for AY 2008-09, same AO has filed this appeal restricted addition to 12.5% in case of sale seller.*

6. We have considered the issue and gone through the facts and circumstances of the case. We find from the facts of the case and argument of both the sides, that the AO & CIT(A) has disallowed 100% of unverifiable purchases. We have noticed from the assessment order and the order of CIT(A) that the sales/ consumption of material in construction project of the assessee are not at all doubted. Only purchases are not genuine but in regard to these purchases the assessee has made payment by account payee cheque and also included the goods in the stock register. Only the assessee could not prove the movement of goods that is transportation of goods but the sales are not doubted, in that eventuality, it is presumed that the assessee might have made purchases from grey market and obtained these bogus bills to save on account of VAT and purchases from grey market are made at a lower rate. Hence, we following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj), wherein in similar



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circumstances has applied profit rate of 12.5%, we apply the profit rate at 12.5% of the bogus purchases. We direct the AO to recompute the disallowance at the rate of 12.5% of the bogus purchases only. This issue of Revenue's appeals is partly allowed.

**7. In the result, the appeal of Revenue is partly allowed.**

Order pronounced in the open court on 13-06-2018.

आदेश की घोषणा खुले मे दिनांक 13-06-2018 को की गई ।

Sd/-

(जी. मंजुनाथ /G MANJUNATHA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 13-06-2018

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

**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)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai



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