



ITA No.5732/Mum/2015
Amit S. Agarwal
Assessment Year-2009-10

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

श्री सी .नागेंद्र प्रसाद, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI C.N. PRASAD, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपीलसं./I.T.A. No.5732/Mum/2015
(निर्धारणवर्ष / Assessment Year: 2009-10)

Income Tax Officer-28(1)(1) Room No.329, 3 rd Floor, Tower No.6 Vashi Railway station complex, Vashi Navi Mumbai-400 705	बनाम/ Vs.	Amit S. Agarwal Flat No.101, Building No.51 Seawoods Estate, Nerul(W) Navi Mumbai-400 705
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No.AABPA-3472-H		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
Revenue by	:	Rajesh Kumar Yadav, Ld.DR
Assessee by	:	Manish V. Shah, Ld. AR
सुनवाई की तारीख/ Date of Hearing	:	12/07/2018
घोषणा की तारीख / Date of Pronouncement	:	12 /07/2018

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [AY] 2009-10 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-26 [CIT(A)], Mumbai, *Appeal No.CIT(A)-26/IT/21/14-15* dated 07/10/2015 by raising following grounds of appeal: -



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1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition of Rs.77,58,233/- u/s.69C of the Act to Rs.4,58,120/- @5.65% gross profit declared by the assessee on the total bogus hawala purchases of Rs.81,08,233/-, thereby allowing relief of Rs.73,00,113/- to the assessee.*
2. *The appellant prays that the order of the CIT(A) on the above ground be reversed and that of the Assessing Officer be restored.*

The assessment for impugned AY was framed by *Ld. Income Tax Officer-22(3)(1), Mumbai [AO] u/s 143(3) read with section 147 of the Income Tax Act,1961* on 30/09/2014 wherein the assessee has been saddled with certain addition of Rs.77.58 Lacs on account of *alleged bogus purchases*, which is the sole subject matter of this appeal. The original return of income filed by the assessee at Rs.6.18 Lacs was processed u/s 143(1).

2. Briefly stated the assessee being *resident individual* engaged in *trading of iron & steel* under proprietorship concern namely *Arpit Enterprises* was subjected to reassessment proceedings for impugned AY pursuant to receipt of certain information from *Sales Tax Department, Maharashtra* regarding dealers being indulging in *bogus purchase bills* without carrying out any actual business. Pursuant to the said information, it was found that the assessee made certain purchases aggregating to Rs.81,08,233/- from six such suspicious dealers, the details of which have been extracted at *para-3* of the quantum assessment order. Consequently notice u/s 148 dated 25/03/2014 was issued to the assessee wherein the assessee was required to substantiate the purchases made by him. The assessee defended the purchases made by him. However, notices u/s 133(6) issued by Ld. AO to confirm the transactions remained un-served.



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Finally, not convinced, Ld. AO made the addition of Rs.77.58 Lacs in the hands of the assessee, being peak credit of *alleged bogus purchases*.

3. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 07/10/2015 wherein the Ld. CIT(A), after considering the factual matrix and placing reliance on certain judicial pronouncements, estimated the impugned additions to 5.65% of aggregate *alleged bogus purchases*. Aggrieved, the revenue is in further appeal before us.

4. It has been brought to our notice that the assessee, similarly aggrieved by the addition of 5.65% as sustained by Ld. CIT(A) contested the same with partial success before this Tribunal vide ITA No. 5867/Mum/2015 dated 03/11/2017 wherein the matter has been concluded as follows:-

3. We have heard the parties and perused the materials on record. Though, in the memorandum of appeal the assessee has raised multiple grounds including the validity of reopening of assessment under section 147 of the Act, however, at the time of hearing the only submission made by the learned A.R. is to the effect that out of the amount added towards bogus purchases, there are purchases returned back by the assessee. Therefore, the G.P. rate adopted by the Commissioner (Appeals) should be applied to net purchases. After hearing the submissions of the parties we are of the view that the issue relating to the addition made on account of bogus purchases requires to be remitted back to the file of the Assessing Officer for verifying the aforesaid claim of the assessee. Let the Assessing Officer verify assessee's claim of purchase returns and in case he is satisfied with assessee's claim, let him apply the G.P. rate of 5.6% to net purchases, alleged to be bogus. Ground no. 4 is partly allowed.

5. We have carefully perused the submissions and the cited order of the Tribunal. We find that a view has already been taken by the Tribunal in assessee's appeal and the matter has already been remitted back to Ld.



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AO with certain directions. Concurring with the same, we dismiss the revenue's appeal.

6. Resultantly, the revenue's appeal stand dismissed.

Order pronounced in the open court on 12th July, 2018

Sd/-

(C.N.Prasad)
न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 12.07.2018

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. विभागीयप्रतिनिधिमुंबई ,आयकरअपीलीयअधिकरण ,/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard File

आदेशानुसार/ BY ORDER,

उपसहायकपंजीकार/ (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण ,मुंबई / ITAT, Mumbai