



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

श्री शक्तिजीत दे, न्यायिक सदस्य एवं

श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।

BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपीलसं./I.T.A. No.734/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2011-12)

Shah & Parikh 2, Vallabh Niwas, Malviya Road Vile Parle (East) Mumbai-400 057	बनाम/ Vs.	Deputy Commissioner of Income Tax Central Circle-1 Old CGO Building, M. K. Road Mumbai-400 020
स्थायी लेखासं./जी आइ आरसं./PAN/GIR No. AAJFS-4684-D		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपीलसं./I.T.A. No.735/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2011-12)

Saket Infraprojects Limited 308, The Summit Business Bay Service Road, Off WEH Vile Parle (E), Mumbai-400 057	बनाम/ Vs.	Deputy Commissioner of Income Tax Central Circle-5 Old CGO Building, 9 th Floor Mumbai-400 020
स्थायी लेखासं./जी आइ आरसं./PAN/GIR No. AAKCS-4532-L		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	A.N. Shah, Ld. AR
Revenue by	:	Rignesh Das, Ld. JCIT- DR

सुनवाई की तारीख/ Date of Hearing	:	04/09/2018
घोषणा की तारीख / Date of Pronouncement	:	26/09/2018

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by separate assessee contest separate orders of Ld. first appellate authority. Since the facts are similar and both the assessees belong to the same group, we dispose-off the same by way of this common order for the sake of convenience & brevity.



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2. The appeal by concerned assessee for Assessment Year [AY] 2011-12 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-47 [CIT(A)], Mumbai, *Appeal No. CIT(A)-36/AP.19/14-15* dated 30/11/2015. The assessment for impugned AY was framed by *Ld. Deputy Commissioner of Income Tax Central Circle-5, Mumbai [AO] u/s 143(3) of the Income Tax Act, 1961* on 29/03/2014 wherein the income of the assessee has been assessed at Rs.377.31 Lacs after certain additions as against returned income of Rs.345.29 Lacs *filed* by the assessee on 29/09/2011. The sole ground raised under the appeal reads as under:-

On the facts and in the circumstances of the case and in law the Learned CIT(A) erred in directing that the disallowance of alleged bogus the purchases be retained to the extent of 14.84% i.e. to the extent of GP.

2.1 Briefly stated, the assessee being *resident firm* was engaged in the business of development of infrastructure projects and registered as a recognized contractor with *Municipal Corporation of Greater Mumbai* and *Metropolitan Region Development Authority* and various other state and central government agencies. The assessee was a part of *M/s RPS Infra-projects group*. The aforesaid group was subjected to a survey action u/s 133A on 26/11/2012 wherein it was gathered that the group obtained accommodation purchase bills from various entities listed as *hawala* dealers by the *Sales Tax Department, Mumbai* thereby inflating its expenses and suppressing the profits. The statement u/s Section 131 of the key persons namely *Jyantilal Laherchand Shah & Nitin R. Shah* was recorded during the survey proceedings, the relevant extracts of which have already been reproduced in the quantum assessment order.



In the aforesaid statements, the key persons admitted various discrepancies in the purchase transactions being carried out by the assessee during impugned AY. However, *Shri Nitin.R.Shah*, subsequently, retracted his statement on 20/03/2013 which has been disregarded by Ld. AO in the light of various judicial pronouncements.

2.2 So far as the quantification is concerned, the assessee reflected aggregate purchases of Rs.1,45,58,457/- from three such suspicious dealers. During assessment proceedings, to verify the genuineness of purchase transactions, notices u/s 133(6) was issued to all the suppliers but the same were returned back *un-served* by postal authorities. The spot verification of all these parties by *Inspector* revealed that none of the party existed at the given address.

2.3 The assessee defended the purchases, *inter-alia*, by submitting that the material was utilized at the sites and the purchases were backed by invoices and the payments were through banking channels. However not convinced, Ld. AO estimated the additions against the same at 18% which resulted into an addition of Rs.26,20,522/- in the hands of the assessee. The Ld. AO also made additional disallowance of 4% against these purchases to account for wrong claim of *VAT / Sales tax Input Credit*. In other words, the action of Ld. AO resulted into additions of 22% against these purchase, which amounted to Rs.32,02,860/-.

3. Aggrieved the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 30/11/2015 wherein the overall estimated addition, in the light of certain judicial pronouncements, has been reduced to 14.84%, being *Gross profit Rate* reflected by the assessee. Aggrieved the assessee is in further appeal before us.



4. The Ld. Authorized Representative for Assessee, *Shri A.N.Shah*, submitted that the impugned additions were still on the higher side keeping in view the assessee's nature of business. Our attention has been drawn to the fact that an estimated rate of 7% has been applied by Ld. first appellate authority in assessee's own case for AYs 2009-10 & 2010-11. The copies of the relevant orders have been placed on record. Per *Contra*, Ld. DR submitted that no further relief could be granted to the assessee.

5. We have carefully heard the rival contentions and perused relevant material on record. We are of the considered opinion that the assessee was engaged in *civil construction* which could not be carried out without purchase of material. The sales turnover achieved by the assessee has not been disputed by the revenue and the payments to suppliers were through banking channels. The assessee was in possession of primary purchases documents. At the same time, the survey proceedings casted serious doubts on the purchases transactions being carried out by the assessee. The key personnel, during survey proceedings, admitted discrepancies in the purchase transactions. The notices u/s 133(6) issued to all the suppliers elicited no response and the spot verification revealed that none of the supplier existed at the given address. All these factors cast serious doubts on assessee's claim. Both the lower authorities, in our opinion, clinched the issue in the proper perspective and proceeded to make estimation against the same. However, keeping in view the overall factual matrix and the nature of assessee's business, the estimation, in our opinion, was on the higher side. Upon perusal of appellate orders for AYs 2009-10 & 2010-11 in assessee's own case, we find that the Ld. first appellate authority has adopted a uniform rate of



7% while estimating such additions for all the group concerns. Keeping in view the same, we reduce the estimated additions to 7% of *alleged bogus purchases*. The impugned order stand modified to that extent. Resultantly, the assessee's appeal stand partly allowed.

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6. The assessee, being part of the same group, under similar circumstances, has been saddled with an addition of 22% against *alleged bogus purchases* for Rs.3,86,21,849/-. The quantum of addition, upon further appeal, has been reduced to 14.91% by Ld. first appellate authority. Facts and circumstances being the same, we reduce the estimated additions to 7% and accordingly, modify the order of Ld. first appellate authority to that extent. The appeal stand partly allowed.

Conclusion

7. Both the appeals stand partly allowed in terms of our above order.

Order pronounced in the open court on 26th September, 2018

Sd/-
(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :26.09.2018
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. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**