

आयकर अपीलिय अधिकरण "B" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री रमित कोचर लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAMIT KOCHAR, AM

आयकर अपील सं./ ITA No. 2902/Mum/2017

(निर्धारण वर्ष / Assessment Year 2009-10)

The Asst. Commissioner of Income Tax-16(1) Room No. 439, Aayakar Bhavan, M.K. Marg, Mumbai-20	Vs.	Shri Nabeel Ebrahim Abbas Epigram Advertising, 3 rd Floor, Roompmangal Bldg, 16 th Road, Santacruz (W), Mumbai-400 054
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./ PAN No. AAQPA8524M		

अपीलार्थी की ओर से / Appellant by	:	Shri S.K. Mitra, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri M.H. Patel, AR

सुनवाई की तारीख / Date of hearing:	05-09-2018
घोषणा की तारीख / Date of pronouncement :	28-09-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal filed by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-4, Mumbai [in short CIT(A)], in appeal No. CIT(A)-4/IT-17/ACIT-16(1)/2015-16, dated 21.01.2017. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle-16(1), Mumbai (in short 'ACIT/ AO') for the A.Y. 2009-10 vide order dated 26.02.2015 under section 143(3) read with section 147 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) restricting the addition at the rate of 4% of the bogus purchases. For this Revenue has raised the following five grounds: -

“1. Whether the Id. CIT(A) has erred on facts and in law in partly allowing the appeal of the assessee and by sustaining the addition to the extent of 4% of purchases in spite of concluding that the purchases have not been established beyond doubt.

2. Whether the Ld. CIT(A) has erred on facts and in law in partly allowing the appeal of the assessee and by sustaining the addition to the extent of 4% of purchases, thereby completely ignoring that the alleged expenses in this case are not of purchase of raw material but of service contract containing printing work.

3. Whether the Id. CIT(A) has erred on facts and in law in merely relying on the submission of the assessee that the material alleged to be procured from the tainted parties was used for publicity of movie without realizing that the movies for which the contract was alleged to be given to tainted parties, were released much after the invoices were raised by tainted parties thereby confirming that transactions with parties were used merely for suppression of profit.

4. Whether the Ld. CIT(A) has erred in Limiting the disallowance to the extent of 4% of the total alleged expenses without going through the invoices raised by those tainted parties wherein the "flex printing" was referred to as "Falex Printing" and "Sunboard Pasting" was mentioned as "Sunbary Pesting",



thereby implying that all these bills were forged by some persons not related to printing business.

5. Whether the Id. CIT(A) has erred in limiting the disallowance to the extent of 4% of the total alleged expenses by relying upon the various Court decisions without appreciating that in all these Court Judgements the concept of restricting the disallowance to the extent of Gross Profit percentage have been held to be valid in case of trading of material, whereas in this case, admittedly the expenses were incurred on account of rendering of services.”

3. Briefly stated facts are that the assessee engaged in the business of film review, editing, project/ creative, print media, outdoor media. The AO received information from DGIT (Investigation), who in turn received information from Sales Tax Department, Mumbai that the assessee has made purchases from hawala parties, as listed in hawala dealers by the Maharashtra Sales Tax Department who are providing bogus bills for purchases. The assessee has taken bogus bills/ purchase entry for an amount of Rs. 65,70,243/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

Sr. No.	Name of assessee	Amount
1.	<i>Shree Omkar Enterprises</i>	69,187
2.	<i>Pioneer Trading Corporation</i>	4,38,298
3.	<i>Global Trade Impex</i>	51,62,352
4.	<i>Siddhi Enterprises</i>	3,49,440
5.	<i>Skand Industries</i>	5,00,797
6.	<i>Ascent Enterpeises</i>	50,169
	<i>Total</i>	65,70,243



4. The AO issued noticed under section 133(6) to the parties which returned back with the remark as “left” and assessee failed to produce these parties. Even the income tax inspector in his report stated that the said parties have never been existed at the address is given. According to the AO, the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of unproved purchase at Rs. 65,70,243/- to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restricted the disallowance at 4% to Rs. 2,62,809/- of the bogus purchases by observing as under: -

“4.3 Since in this case purchases have not been established beyond doubt hence, in the light of decision of Hon’ble ITAT and High Court of Gujrat, in the cases of Simit P. Sheth, 38 taxmann.com 385 and CIT Vs. Bholanath Poly Fab Pvt. Ltd. 355 ITR 290(Guj.) it is considered appropriate to restrict the disallowance @4% because of the reason that the Assessing Officer has accepted the fact that purchase of raw material has been utilized for getting printed posters of the films for advertisement purposes and overall Profit has been shown nearer to 4 to 5%. Since nature of the business of the appellant is not of trading but of printing of material and doing printing job work like Flex, Sunboard & Sunpack. etc. Obviously, such work are labour intensive. Once a printed material are approved and job executed are of the satisfaction of the client, then only, payments are received, In this year, Net Profit is 1.92% and G.P @6% in M/s Epigram Print. It may be noted that the Appellant has two business, one is of Advertisement and second one is of Printing of Banners & Posters. Therefore, general N.P./G.P. cannot be applied with a view to cover-up



the possibility of leakage of revenue. 4% of such purchases are to be estimated as income. The Assessing Officer is therefore, directed to restrict the disallowance which comes to Rs. 2,62,809/- and delete the balance amount of Rs.63,07,433/-."

5. 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 CIT(A) has applied the profit rate at the rate of 4%, which according to us is on lower side going by the nature of business of the assessee i.e. of Film review, editing, project/ creative, print media, outdoor media. We are in full agreement with the argument of the learned Departmental Representative and according to us an additional profit rate of 12.5% on aforesaid alleged bogus purchases will meet the end of justice in view of the decision of Hon'ble Gujarat High Court in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj). Hence, we direct the AO to recompute the income after applying additional profit rate at the rate of 12.5% on alleged bogus purchases and compute the income accordingly. The appeal of the Revenue is partly allowed.

6. In the result, the appeal of the Revenue partly allowed.

Order pronounced in the open court on 28-09-2018.

Sd/-

(रमित कोचर / RAMIT KOCHAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 28-09-2018

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

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)



ITA Nos. 2902/Mum/2017

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