



ITA.Nos.1533 & 1534/Mum/2017  
Homa Engineering Works  
Assessment Year-2009-10 & 2011-12

**आयकर अपीलीय अधिकरण "एच" न्यायपीठ मुंबई में।**

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

श्री मनोज कुमार अग्रवाल, लेखा सदस्य एवं  
श्री रविश सूद, न्यायिक सदस्य  
के समक्ष।

**BEFORE SHRI MANOJ KUMAR AGGARWAL, AM  
AND  
SHRI RAVISH SOOD, JM**

आयकरअपीलसं./I.T.A. No.1533/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Homa Engineering Works</b> Office No.1 & 2, Ground Floor Cotton Press Building 1 <sup>st</sup> Magazine Street Darukhana, Mazgaon Mumbai-400 010	<b>बनाम/ Vs.</b>	<b>Deputy Commissioner of Income Tax-13(1)</b> Room No.117, 1 <sup>st</sup> Floor Aaykar Bhavan Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AAAFH-0860-K</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

&

आयकरअपीलसं./I.T.A. No.1534/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2011-12)

<b>Homa Engineering Works</b> Office No.1 & 2, Ground Floor Cotton Press Building 1 <sup>st</sup> Magazine Street Darukhana, Mazgaon Mumbai-400 010	<b>बनाम/ Vs.</b>	<b>Deputy Commissioner of Income Tax-13(1)</b> Room No.117, 1 <sup>st</sup> Floor Aaykar Bhavan Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AAAFH-0860-K</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Kishor Patel & Manali Madhwani, Ld. ARs
<b>Revenue by</b>	:	Manoj Kumar Singh, Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	18/09/2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	05/10/2018



## आदेश / ORDER

### Per Manoj Kumar Aggarwal (Accountant Member)

1. The aforesaid appeals by assessee for Assessment Years [AY] 2009-10 & 2011-12 contest separate order of first appellate authority. Since common issues are involved in both the appeals, we dispose-off the same by way of this common order for the sake of convenience and brevity. First we take up ITA.No.1533/Mum/2017 for AY 2009-10 which contest the order of Ld. Commissioner of Income-Tax (Appeals)-28 [CIT(A)], Mumbai, *Appeal No.CIT(A)-28/IT-661/ITO-17(1)(5)/2014-15* dated 09/12/2016 by raising following grounds of appeal:

**1) Reopening of assessment bad in law:**

- a) *The learned Commissioner of Income-tax (Appeals) ["CIT(A)"] erred in confirming the action of the Deputy Commissioner of Income Tax 13(1), Mumbai ("AO") in reopening the assessment u/s 148 of the Income-Tax Act, 1961.*
- b) *As there was no reason to believe that the income chargeable to tax has escaped assessment, the reopening is without jurisdiction*
- c) *On the basis of the facts and in the circumstances of the case and in law, the reopening is invalid, bad in law and ought to be quashed.*

**2) Addition on account of alleged bogus purchases Rs.65,99,994/-:-**

- a) *The learned CIT(A) erred in confirming the action of the AO in disallowing, on the basis of information received from the Sales Tax Department, purchase of Rs.65,99,994/- alleged to be bogus without appreciating the documentary evidence placed before him in support of the said purchases which established the identity of the parties and the genuineness of the purchases made.*
- b) *On the basis of the facts and in the circumstances of the case and in law, the action by the AO and confirmed by the CIT(A) may please be deleted.*
- c) *Without prejudice to the above, the learned CIT(A) failed to appreciate that the corresponding income by way of Sales & Services having been accepted, as a natural corollary, not the entire purchases but the profit element embedded therein would be subject to tax, which in Appellant's case only 19.43% (Gross Profit) of the purchases of Rs.65,99,994/- ought to have been subjected to tax.*



ITA.Nos.1533 & 1534/Mum/2017  
Homa Engineering Works  
Assessment Year-2009-10 & 2011-12

The assessment for impugned AY was framed by *Ld. Deputy Commissioner of Income Tax, Range-13(1), Mumbai [AO] u/s 143(3) read with section 147* vide order dated 26/03/2014.

2.1 During impugned AY, the assessee being *resident firm* was stated to be engaged as *Engineers, Ship repairers, Marine contractors*. The income of the assessee has been determined at Rs.117.49 Lacs after additions of *alleged bogus purchases* for Rs.65.99 Lacs as against returned income of Rs.51.49 Lacs *e-filed* by the assessee on 30/09/2009 which was assessed u/s 143(3) on 30/11/2011 at Rs.65.77 Lacs.

2.2 The reassessment proceedings were initiated vide notice u/s 148 dated 13/03/2013 pursuant to receipt of certain information from the *Sales Tax Department, Maharashtra* wherein it was found that the assessee stood benefitted of *alleged bogus purchases* aggregating to Rs.65.99 Lacs from ten parties, the details of which have already been extracted at *para-4.1* of the quantum assessment order. The partner of the assessee firm, vide summons dated 07/03/2013 u/s 131, was asked to produce the *purchase register, purchase bills, transportation documents and manner of utilization of material*. The statement of the partner was also recorded on oath u/s 131 on 14/03/2013 before the lower authorities. However, the assessee conclusively failed to substantiate the purchase transactions and expressed inability to produce any of the parties for confirmation of transactions. No transportation or quantitative details were filed. The assessee defended the purchase transactions vide reply dated 28/03/2014. However, not convinced Ld. AO, for multiple reasons as stated at *para-4.7*, disallowed the purchases and added the same to the income of the assessee.



3. Aggrieved, the assessee contested the reassessment proceedings on legal grounds as well as on merits before Ld. CIT(A) without any success vide impugned order dated 09/12/2016 wherein the stand of Ld. AO got confirmed. Aggrieved, the assessee is in further appeal before us.

4. The Ld. Authorized Representative [AR] for the assessee, *Shri Kishore Patel*, drawing our attention to the documents placed in the *paper book*, agitated the additions as confirmed by Ld. first appellate authority. The Ld. AR also drew our attention to the order of Ld. first appellate authority for AY 2010-11 to submit that additions, under similar circumstances, have been restricted to *Gross Profit rate* declared by the assessee. No serious arguments have been adduced to assail the reassessment proceedings and therefore, the grounds raised in that regard are taken to be *not pressed*. Per *Contra*, Ld. Departmental Representative [DR], *Shri Manoj Kumar Singh*, supported the stand of lower authorities.

5. We have carefully heard the rival contentions and perused the relevant material on record including documents placed in the paper book and judicial pronouncements as cited before us. We are of the considered opinion that there could be no sale without actual purchase of material since the assessee was engaged in *contract work*. The sales turnover achieved by the assessee has not been disputed by the revenue and the payments were through banking channels. The assessee was in possession of primary purchases documents. At the same time, the assessee could not conclusively substantiate the purchases made by him and failed to produce any of the party to confirm



the transactions. The delivery of the material could not be substantiated and even the quantitative details could not be provided by the assessee. All these factors cast a serious doubt on assessee's claim. Therefore, in such a situation, the addition, which could be made, was to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the *grey market* and undue benefit of VAT against such bogus purchases. Therefore, we estimate the same @12.5% of *alleged bogus purchases* of Rs.65.99 Lacs which comes to Rs.8.25 Lacs. The balance additions stand deleted. The grounds and the appeal stand partly allowed.

### **ITA NO.1534/Mum/2017**

6. This appeal by assessee contests confirmation of following additions:-

<b>No.</b>	<b>Nature of Addition</b>	<b>Amount (Rs.)</b>
1.	Commission Expenditure	5,84,331/-
2.	Disallowance u/s 28(iv)	23,29,801/-
	<b>Total</b>	<b>29,14,132/-</b>

7.1 Brief facts *qua* the addition of commission expenditure of Rs.5.84 Lacs are that the assessee claimed the aforesaid expenditure as commission payment to an entity namely *Corporate Alliances*. It was stated that the services of said entity was availed to liaise with the authorities at regular interval and was akin to *professional fees*. However, relying upon orders for AY 2009-10 & 2010-11, Ld. AO opined that there was no possibility of any commission payments keeping in view the fact that the assessee was dealing only with the Government authorities and therefore, the expenditure was not allowable to the



assessee. The same, upon confirmation by Ld. CIT(A), is under appeal before us.

7.2 The second addition stem from the fact that to confirm the closing balances reflected by the assessee against four Sundry Creditors, notices u/s 133(6) were sent. However, in response to the same, all the parties denied having any business activity with the assessee. The relevant details of these parties and result of notice u/s 133(6) and the assessee's submissions against the same has already been extracted at *para-4* of the quantum assessment order. The Ld. AO, applying the provisions of Section 28(iv), added the same to the income of the assessee. The same, upon confirmation by Ld. CIT(A), are under appeal before us.

8. The Ld. AR has agitated both the additions which has been controverted by Ld. DR.

9. We have carefully heard the same and gone through the documents. So far as the commission expenditure is concerned, Ld. AR has submitted that the commission has been paid against independent *professional services* rendered by the said entity to the assessee and the same was not merely in the nature of *liasioning services*. Our attention has been drawn to the profile of the said entity to submit that it was independent professional entity and was not merely acting as an agent of the assessee. The supporting documents in the shape of *invoices, agreement, engagement letter etc.* have been placed on record. It is also noted that similar additions made by Ld. AO in AY 2009-10 has been deleted by Ld. first appellate authority, finding substance in assessee's claim. Therefore finding strength in the arguments of Ld. AR, the issue



ITA.Nos.1533 & 1534/Mum/2017  
Homa Engineering Works  
Assessment Year-2009-10 & 2011-12

stand remitted back to the file of Ld. AO for re-adjudication as per law in the light of submissions made by Ld. AR. The assessee, in turn, is directed to substantiate his claim, failing which Ld. AO shall be at liberty to adjudicate on the basis of material available on record. The ground stand allowed for statistical purposes.

10. So far as the addition u/s 28(iv) is concerned, Ld. AR has pleaded to admission of additional evidences in terms of Rule 29 of the Income Tax Tribunal Rules, 1963 vide application dated 18/09/2018. These evidences are in the shape of ledger accounts of the four sundry creditors to demonstrate that the liabilities have subsequently been discharged by the assessee by way of bank payments. These evidences, if found authenticated and admissible, would run contrary to the findings of Ld. AO. Therefore, while admitting the same, this issue is also restored to the file of Ld. AO for adjudication in the light of additional evidences submitted before us. The requisite information / explanation /other evidences, in this regard, shall be adduced by the assessee before Ld. AO. The ground as well as the appeal stand allowed for statistical purposes.

### **Conclusion**

11. The appeal for AY 2009-10 stands partly allowed whereas the appeal for AY 2011-12 stands allowed for statistical purposes.

*Order pronounced in the open court on 05<sup>th</sup> October, 2018.*

Sd/-  
**(Ravish Sood)**

Sd/-  
**(Manoj Kumar Aggarwal)**

न्यायिक सदस्य / **Judicial Member** लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated 05.10.2018

Sr.PS:-Thirumalesh



ITA.Nos.1533 & 1534/Mum/2017  
Homa Engineering Works  
Assessment Year-2009-10 & 2011-12

**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**