

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” 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 अपील सं./I.T.A. No.1185/Mum/2015
 (निर्धारण वर्ष / Assessment Year: 2009-10)

Assistant Commissioner of Income Tax-19(2) Room No.207, Matru Mandir Mumbai-400 007	बनाम/ Vs.	Nandish Construction Co. 1 st Floor, 12, Hirakunj Khotachiwadi, V.P.Road Mumbai-400 004
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAAFN-3169-K		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	None
Revenue by	:	Chaudhary Arun Kumar Singh, Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	01/10/2018
घोषणा की तारीख / Date of Pronouncement	:	10/10/2018

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [AY] 2009-10 is a recalled matter which contest the order of the Ld. Commissioner of Income-Tax (Appeals)-30, Mumbai, [CIT(A)], *Appeal No.CIT(A)-30/AC 19(2)/90/2014-15 dated 23/12/2014 qua estimation of additions against alleged bogus purchases.* The appeal was initially dismissed

by the Tribunal vide order dated 28/02/2017 finding the tax effect of the appeal below the threshold limit of Rs.10 Lacs. However, the same has subsequently been recalled at the behest of revenue vide *MA No. 708/Mum/2017 dated 06/04/2018* upon being pointed out that the tax effect was, in fact, more than the threshold limit of Rs.10 Lacs. Accordingly, the appeal has come up for re-hearing before this bench.

2. None has appeared for assessee and no valid adjournment application is on record. Left with no option, we proceed to dispose-off the same in terms of Rule 25 of the *Income Tax (Appellate Tribunal) Rules, 1963* on the basis of material available on record and after hearing Ld. Departmental Representative, *Shri Arun Kumar Singh Chaudhary* who has justified the stand of Ld. AO in making full addition of Rs.220.11 Lacs on account of *alleged bogus purchases* stated to be made by the assessee from four *alleged bogus suppliers*.

3. The assessee being *resident firm* was re-assessed u/s 143 read with *Section 147* wherein the assessee was saddled with addition of Rs.220.11 Lacs on account of *alleged bogus purchases* stated to be made by the assessee from four suppliers, the details of which have already been extracted in *para-2* of quantum reassessment order. The reassessment proceedings were initiated pursuant to receipt of certain information from *Sales Tax Department, Maharashtra* wherein it transpired that the assessee stood benefitted by accommodation bills aggregating to Rs.220.11 Lacs from four parties. Notices issued u/s 133(6) to confirm the transactions elicited no satisfactory response and the physical inspection of the addresses of suppliers revealed that

no such party was existing at the given addresses. Accordingly, the assessee was required to substantiate the same. The assessee defended the same, however, not convinced, Ld. AO treating the same as *bogus purchases* added the purchases to the income of the assessee.

4. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 23/12/2014 which is common order for AY 2009-10 & 2010-11. The Ld. CIT(A) after due consideration of factual matrix, restricted the impugned additions to 12.5% of *alleged bogus purchases*.

5. After due consideration of orders of lower authorities, we are of the considered opinion that the assessee was engaged as *civil contractor* which could not be carried out without consumption of actual material. The 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 purchase documents. However, at the same time, notices issued u/s 133(6) remained unanswered and physical inspection revealed that none of the parties was operating from the given addresses. The assessee could not produce any of the suppliers to confirm the transactions. In such a scenario, the estimated addition of 12.5% as made by first appellate authority, in our opinion, justifies the factual matrix and hence, we do not find any infirmity in the same.

6. The appeal stands dismissed.

Order pronounced in the open court on 10th October, 2018.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :10.10.2018
Sr.PS:-Thirumalesh

आदेश की प्रतिलिपि ँ ग्रेषित / 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