

IN THE INCOME TAX APPELLATE TRIBUNAL  
“H” Bench, Mumbai  
Before S/Shri B.R. Baskaran (AM) & Sandeep Gosain (JM)

I.T.A. No. 5529/Mum/2016 (Assessment Year 2006-07)  
I.T.A. No. 5531/Mum/2016 (Assessment Year 2009-10)  
I.T.A. No. 5532/Mum/2016 (Assessment Year 2010-11)

DCIT-CC 1(4) Room No. 902 Pratishtha Bhavan Old CGO building Annexe, M.K.Road Mumbai-400 020. (Appellant)	Vs.	Ms. Sunita Omprakash Singh Flat No. 502 A Wing, Neptune Dosti Estate S.M. Road, Wadala (E) Mumbai-400 037. PAN : AMVPS1142G (Respondent)
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Assessee by	Shri Dhavan Shah
Department by	Shri Anoop Hiwase
Date of Hearing	08.10.2018
Date of Pronouncement	08.10.2018

ORDER

Per B.R. Baskaran (AM) :-

All these three appeals filed by the Revenue are directed against a common order dated 29.6.2016 passed by the learned CIT(A)-47, Mumbai and they relate to A.Ys. 2006-07, 2009-10 & 2010-11. As the issues urged in these appeals are identical in nature, these appeals were heard together and are being disposed of by this common order, for the sake of convenience. In all these appeals the Revenue is aggrieved by the decision rendered by the learned CIT(A) in restricting the addition relating to bogus purchases to the extent of average gross profit declared by the assessee.

2. We have heard the parties and perused the record. The Revenue conducted search and seizure operation in the case of M/s. Tirupati Group of companies which were doing business in MS Steel, pipes, MS joist, RSJ polls, angles channels and TMT bars etc. The assessee's husband was considered to be a mediator who was arranging hawala transactions by providing accommodation entries and bogus bills to interested parties. The assessee was

running concern by name M/s. Adarsh Steel. Hence search was conducted in assessee's place also. Hence present assessments were completed in the hands of the assessee u/s. 153C read with section 143(3) of the Act.

3. During the course of assessment proceedings, it was noticed that the assessee has purchased materials from certain dealers, who have been named by Sales tax department as suspicious dealers providing only accommodation bills. The Assessing Officer proposed to assess peak credit of purchases made from suspicious dealers as income of the assessee. Peak credit of purchases have been worked out by the Assessing Officer as under :-

A.Y.	Amount (₹)
2006-07	25,75,642
2007-08	52,36,634
2009-10	16,38,918
2010-11	15,43,479

Accordingly, the Assessing Officer added peak credit of bogus purchases referred above in respect of assessment years.

4. In the appellate proceedings, the learned CIT(A) took the view that purchases could not be added in the hands of the assessee as the Assessing Officer has accepted genuineness of the sales. Accordingly, the learned CIT(A) took the view that profit element embedded in such purchases should be assessed. Accordingly, the learned CIT(A) directed the Assessing Officer to compute disallowance on the basis of average gross profit, which was worked out by him as under :-

A.Y.	G.P. for preceding year	G.P. for the year under consideration	Average G.P. (round off)
2006-07	--	4.45	4.5
2007-08	4.45	4.41	4.4
2009-10	3.50	6.53	5.0
2010-11	6.53	7.03	6.8

5. Aggrieved, by the orders passed by the learned CIT(A), the Revenue filed appeals for all four years i.e. including A.Y. 2007-08.

6. Appeal filed by the Revenue for A.Y. 2007-08 has since been disposed of by the Coordinate Bench of the Tribunal vide its order dated 13.9.2017 passed in ITA No. 5530/Mum/2016, wherein the Tribunal has confirmed the order passed by the learned CIT(A) with following observations :-

*4. We have heard both the parties and perused material available on record. The AO made additions towards purchases made from certain parties on the basis of information gathered during the course of search which revealed that the said parties are involved in providing accommodation entries without actual delivery of goods. The assessee claims that purchases made from those parties are genuine, which are supported by proper bills and vouchers and also payment for such purchases has been made through proper banking channels. The assessee further contended that the AO has not disputed sales declared for the relevant financial year. No adverse comments have been made on books of account or stock registers. In the absence of any finding as to the correctness of books of account, additions cannot be made merely on the basis of third party admission despite furnishing all the details to prove that the purchases are genuine.*

*5. Having heard both the sides, we find that the AO has gathered sufficient ITA No.5530/Mum/2016 ITA No.5530/Mum/2016 evidences which prove that the said parties are involved in providing accommodation entries without actual delivery of goods. Though the assessee has furnished certain evidences to prove purchases, but failed to substantiate purchases with further evidences in the backdrop of clear finding of the AO that the said parties have categorically admitted during the course of search that they were merely paper concerns involved in providing bogus bills. Therefore, we are of the view that the purchases made from the above parties cannot be considered as genuine in nature. At the same time, the assessee has furnished certain bills and also filed proof of payment and claims that payment against purchases are made through banking channels. The assessee further submitted that the AO has not doubted sales declared by the assessee. No adverse comments have been made about books of account and stock details. Under these factual background, at the most, a reasonable inference can only be drawn that the assessee has inflated purchases to reduce profit. Therefore, what needs to be taxed is only profit element embedded in those purchases and not total purchases. The CIT(A), after considering relevant submissions of the assessee and also taking into account the past gross profit rate declared by the assessee has directed the AO to estimate profit of average gross profit declared by the assessee in the preceding financial years. We do not find any error in the order of the CIT(A). Hence, we are inclined to*

*uphold the order of ITA No.5530/Mum/2016 ITA No.5530/Mum/2016 CIT(A) and dismiss the appeal filed by the revenue.*

7. Learned AR submitted that the facts and circumstances relating to the issue under consideration in these three years are identical with the facts considered and disposed of by the Coordinate Bench in assessee's own case for A.Y. 2007-08. Learned DR did not dispute the same.

8. Having regard to the submissions, we are of the view that the order passed by the learned CIT(A) in these three years should be upheld as identical decision taken by the learned CIT(A) in assessee's own case for A.Y. 2007-08 has been upheld by the Coordinate Bench. Accordingly, we uphold the order passed by the learned CIT(A) in three years under consideration.

9. In the result, all the appeals filed by the Revenue are dismissed.

Order has been pronounced in the Court on 08.10.2018.

Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 08/10/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Senior Private Secretary)  
ITAT, Mumbai

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