

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई मे ।

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

श्री महावीर सिंह, न्यायिक सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 1964/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

आयकर अपील सं./ ITA No. 1965/Mum/2018

(निर्धारण वर्ष / Assessment Year 2011-12)

Ajay Radheshyam Kejriwal 1-A-65, Manali, Evershine Nagar, Malad (West), Mumbai-400 064	Vs.	Income Tax Officer, Ward 30(1)(1), C-13, 5 th Floor, Bandra
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AANPK4820F		

अपीलार्थी की ओर से / **Appellant by** : Shri Ajay Radheshyam Kejriwal,
AR

प्रत्यर्थी की ओर से / **Respondent by** : Shri SK Bepari, DR

सुनवाई की तारीख / Date of hearing:	22.10.2018
घोषणा की तारीख / Date of pronouncement :	22.10.2018

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

These two appeals by the assessee are arising out of the order of Commissioner of Income Tax (Appeals)-41, Mumbai [in short CIT(A)], in appeal No. CIT(A)-41/IT 250/15-16, CIT(A)-41/IT-343/15-16 vide dated 20.11.2017. The Assessments were framed by the Income Tax Officer, Ward-30(1)(1) Mumbai (in short 'ITO'/ AO) for the A.Y. 2009-10, 2011-12



vide order dated 30.03.2015 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 assessee is against the order of CIT(A) confirming the disallowance made by AO off non-genuine and bogus purchases. For this assessee has raised identically worded grounds in both the years except the quantum. The facts and circumstances are exactly identical in both the years and hence, we will take the facts from AY 2009-10 and will decide the issue. The grounds raised in AY 2009-10 reads as under: -

"In AY 2009-10

1. *On the facts and circumstances of the case and law applicable thereto, the Ld. CIT(A) erred in holding the validity of the re-opening of assessment proceedings under section 147 of the I.T. Act, 1961.*

2. *On the facts and circumstances of the case and law applicable thereto, the Ld. CIT(A) erred in treating the purchase from various parties as non-genuine and bogus and thereby confirming the disallowance of ₹ 8,85,211/-."*

3. Briefly stated facts are that the assessee engaged in the business of reselling of chemicals. 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 of purchase amounting to ₹ 8,85,211/- for AY 2009-10 and ₹ 4,23,467/- for AY 2011-12 as admitted by



these hawala dealers in their deposition before the authorities. The same reads as under in both the years respectively: -

In AY 2009-10

<i>Name of party</i>	<i>Amount</i>
<i>M/s Dhruv Sales Corporation</i>	<i>62,400</i>
<i>Shrinath Trading Company</i>	<i>6,22,939</i>
<i>Great International Co.</i>	<i>1,99,872</i>
	<i>8,85,211</i>

In AY 2011-12

<i>Name of party</i>	<i>Amount</i>
<i>Sunshine International</i>	<i>4,23,467</i>
	<i>4,23,467</i>

4. The AO issued noticed under section 143(2) and 143(1) with questionnaire were issued and assessee failed to furnish any explanation. During the course of assessment proceedings and during appellate proceedings, the assessee failed to submit documents in respect of documentary evidences such as payment received against such sales, receipt of material purchases, account payee cheque. According to the AO, the assessee failed to establish the genuineness of the purchase in both the years and accordingly, he made addition of unproved purchases of ₹ 8,85,211 for AY 2009-10 and ₹ 4,23,467 for AY 2011-12 to the return income of the assessee, respectively. Aggrieved, assessee preferred the appeal before CIT(A), who confirmed the addition made by the AO by observing in para 11 for AY 2009-10 of his appellate orders as under: -

“11. The impugned addition has been made for non-compliance on the part of the assessee during the assessment proceedings. The AO has made the impugned addition based on the information received from the State Sales Tax Department, non-service of notices issued u/s



133(6) of the I.T. Act and none reply of the appellant with respect to specific show cause notice issued in this regard. As stated in the proceedings paragraphs, even during the appellate proceedings, the appellant has failed to submit any document to put forth his ground of appeal raised in the appeal that the action of the AO is unjustified. Hence, I do not have any hesitation to confirm the addition of ₹ 8,85,211/- on account of bogus purchase during the year consideration as well as re-opening of assessment under section 147 of the I.T. Act.”

5. I find that this issue is squarely covered in assessee's own case for AY 2010-11 in ITA No. 1903/Mum/2018 order dated 06.07.2018 wherein Tribunal has estimated profit on bogus purchases at 6% by observing as under vide Para 10 as under: -

“10. Since the assessee could correlate purchases with sales, the profit, if any, made in such purchases could be assessed as per the decision of Hon'ble Gujarat High Court in the case of Simit P. Sheth (supra). Considering the VAT rate of 4%, we are of the view that the profit element involved in the impugned purchases may be estimated @ 6%. Accordingly, we modify the order of Ld. CIT(A) and direct the AO to sustain addition to the extent of 6% of value of impugned purchase.”



ITA no.1964 & 1956/Mum/2018

2. In view of the above, I also direct the AO to recompute the profit on bogus purchases by estimating the profit rate at 6% in both the years. Both the appeals of assessee is partly allowed as indicated above.

6. In the result, the appeals of assessee are partly allowed.

Order pronounced in the open court on 22-10-2018.

आदेश की घोषणा खुले मे दिनांक 22-10-2018 को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 22-10-2018

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI