

आयकर अपीलिय अधिकरण “B” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 614/Mum/2015

(निर्धारण वर्ष / Assessment Year 2010-11)

N.V. Graphics & Advertising Pvt. Ltd. 52/B, Heera Panna CHS, Haji Ali, Mumbai-400 026	Vs.	The Dy. Commissioner of Income Tax, Circle 5(2) Aayakar Bhavan, M.K. Road, Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AACCN1589J		

अपीलार्थी की ओर से / **Appellant by** : Shri K. Gopal
Ms. Neha Paranjpe, ARs'

प्रत्यर्थी की ओर से / **Respondent by** : Shri Chaudhary Arun Kumar
Singh, DR

सुनवाई की तारीख / Date of hearing:	09.10.2018
घोषणा की तारीख / Date of pronouncement :	09.10.2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-9, Mumbai [in short CIT(A)], in appeal No. CIT(A)-9/DCIT 5(2)/157/2013-14 vide order dated 22.10.2014. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle 5(2), Mumbai (in short 'DCIT/ AO') for the A.Y. 2010-11 vide order



dated 20.03.2013 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the disallowance of entire bogus purchases of ₹ 19,61,231/- made from five different vendors. For this assessee has raised the following ground No. 1:-

“1. That the learned CIT-(A) erred in law and on facts in upholding the disallowance of purchases of Rs. 1961231/- made from 5 different vendors. wrongly treating it to be in the nature of 'bogus purchases.’”

3. Briefly stated facts are that the assessee engaged in the preparation of Hoardings/ Sign Boards of Flex and vinyl. The AO received information from DGIT (Investigation), who in turn received information from Sales Tax Department, Mumbai that the assessee has made purchases from 5 hawala parties, who were listed as hawala dealers by the Maharashtra Sales Tax Department. The assessee has made bogus purchase amounting to Rs. 19,61,231/- as admitted by these hawala dealers in their deposition before the authorities. The details of the same are as under: -

<i>Name of party</i>	<i>Amount</i>
<i>Siddhivinayak Corporation</i>	<i>33,696</i>
<i>Elora Sales & Marketing Pvt. Ltd</i>	<i>1,77,346</i>
<i>Nandini Tradex Pvt. Ltd</i>	<i>1,82,039</i>
<i>Creative Enterprises</i>	<i>6,51,105</i>
<i>Shree Sai Trading Co</i>	<i>9,17,045</i>
<i>Total</i>	<i>19,61,231</i>

4. The AO concluded that the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of



unproved purchase of Rs. 19,61,231/- to the returned income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the order of Assessing Officer and made the disallowance by observing as under: -

“Bogus purchases Regarding the addition on account of bogus purchases from five parties which have been proved a hawala entry provider by the enquiries of the Sales Tax Authorities and the Income Tax Department, it is noted that the appellant during the assessment proceedings could not provide any documentary evidence of actual delivery of material allegedly purchased from these parties. During the appeal proceedings also the appellant could not file any documentary evidence at all which could show that it has actually purchased any material from the aforesaid parties. Under these circumstances, prime lade such purchases does not appear genuine.

Though the appellant has tried to take shelter of various case laws, but the peculiar facts and circumstances of the case are distinguishable from the facts of the relied upon cases. It is worth noting that in the case of Sumati Dayal (214 ITR 801) the Hon'ble Apex Court has also held that one has to consider all surrounding circumstances for accepting the genuineness of a transaction. Further, in the case of P Mohankala 291 ITR 278, also, after considering the entirety of surrounding circumstances the Hon'ble Supreme Court has not accepted the genuineness of cash credits even



though the same were received through banking channels.

In the instant case, it is an undisputed fact that detailed inquiries by Sales Tax Department revealed that none of the 5 parties in question, from whom the appellant has claimed purchases worth Rs. 19,61,231/- appears in position to actually supply the material to the assessee as they do not have any infrastructure and capacity to supply the product in question and only exist on paper. Under these circumstances, it is quite clear that neither there is any evidence which could prove the capacity of these parties for supplying huge material to the assessee nor the assessee has filed any convincing documentary evidence of actual receipt of material from these parties, as there has been no mention of mode of delivery (transport) on the bills of the parties in question. whereas in respect of genuine purchases, the concerned parties mention the details of mode of transport. When the A.O has clinching evidence to show that there has not been any actual purchases from such parties, under these circumstances, the assessee is required to prove otherwise. Neither at the time of assessment stage nor in the appeal proceedings, the appellant could produce any of the parties nor any evidence in support of actual purchase was put for-ward by the appellant. Since the appellant has not been able to explain the source of such purchases, therefore these purchases are liable to be treated as bogus purchases, which tantamount to claim of inflated



*expenditure which deserves to be disallowed in toto.
Under these circumstances, addition made by the
AO on this ground is confirmed.”*

5. We have considered the issue and gone through the facts and circumstances of the case. We find that the assessee is engaged in the preparation of Hoardings/ Sign Boards of Flex and vinyl. Upon due consideration, we find that the purchases made from these hawala parties are not proved by the assessee beyond doubt. In such situation the assessee might have made purchases from grey market and obtained these bogus bills from hawala parties by paying some commission. In this exercise, the assessee might have saved VAT and also purchased material from grey market at a lower price. The learned Counsel for the assessee requested that a reasonable profit should be estimated and credit for disclosed profit rate should be allowed from this profit rate of bogus purchases to be applied. We are in full agreement with the argument of the learned Counsel for the assessee and according to us a profit rate of 12.5% 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 re-compute the income by making addition @12.5% of these alleged bogus purchases. This issue of assessee's appeal is partly allowed.

6. The second issue in this appeal of assessee is as regards to the disallowance of expenses relatable to exempt income by the AO and confirmed by CIT(A) by invoking the provisions of section 14A of the Act read with Rule 8D of the Rules. At the outset, the learned Counsel for the assessee stated that he has got instructions from the assessee not to press this issue due to smallness of the amount. The learned Counsel for the stated that the disallowance is only to the extent of ₹ 1,69,340/-. The learned Departmental Representative has not objected the same. Since,



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learned Counsel for the assessee has not pressed this issue, the same is dismissed.

7. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 09-10-2018.

आदेश की घोषणा खुले मे दिनांक 09-10-2018 को की गई ।

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 09-10-2018

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