

आयकर अपीलिय 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. 611/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

Sirajuddin Mujibullah Siddiqui 17, Liberty Compound, Oshiwara Bridge, S.V. Road, Jogeshwari (W), Mumbai-400 102	Vs.	Income Tax Officer, 31(3)(4), 4 th Floor, C-13, R.No. 408-C, Pratyaksha Kar Bhavan, Bandra Kurla Complex, Bandra(East), Mumbai-400 051
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AKGPS9659D		

अपीलार्थी की ओर से / Appellant by : Shri Prakash Jani, AR

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

सुनवाई की तारीख / Date of hearing:	24.10.2018
घोषणा की तारीख / Date of pronouncement :	24.10.2018

आदेश / ORDER

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

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-42, Mumbai [in short CIT(A)], in appeal No. CIT(A)-42/IT-127/15-16 vide dated 18.01.2017. The Assessment was framed by the Income Tax Officer, Ward 31(3)(4), Mumbai (in short 'ITO/ AO') for the A.Y. 2009-10 vide dated 09.03.2015 under section 143(3) 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) directing the AO to restrict the addition made by AO being estimate of profit percentage at the rate of 18% on bogus purchases. For this assessee has raised following ground: -

“1. The learned ITO erred in making addition of Rs. 15,87,164/- treating genuine purchases effected by the Appellant as bogus / non genuine purchases based on the list of suspicious dealer published by Sales Tax Department even though all the details such as Invoice copy. Proof of Delivery, Bank statement et. were submitted by the Appellant. The Appellant preferred an appeal before The Hon. Commissioner of Appeals - 34, Mumbai who confirmed the entire addition without giving any relief in the matter stating the purchases to be non-genuine. The Appellant prays to delete the entire addition on appreciation of facts and give justice by deleting the entire addition.

2. Notwithstanding anything contrary to above, the Appellant plead that for the same period in the case of re-opened assessment pursuant to notice u/s 147 the assessment was completed by the learned ITO 31(3)(4) Mumbai by making entire addition of Rs.7,58,082/- based on the information in respect of bogus purchases taken out from the list published by Sales Tax Department. The Appellant preferred an Appeal before Hon. Commissioner of Income Tax - 42, Mumbai against the order of A.O). Hon.



Commissioner of Income Tax - 42, Mumbai gave substantial relief by restricting the addition to 18% of above purchases of Rs. 1,36,455/- and gave relief of Rs.6,21,627/- on the addition made by the learned ITO 31(3)(4) Mumbai. The Appellant prays to give relief for the addition made in respect of the genuine purchases made of Rs. 15,87,164/- treated as bogus purchases narrated in Ground No. 1 above by restricting addition to appropriate percentage on the merits of the case.

3. The Appellant prays to consider the point raised in Ground No.2 above as at the time of filing Subsequent Appeal before Hon. CIT Appeal 42, Mumbai in respect of re-opened assessment, due to inadvertent omission for relief in respect of addition made by learned ITO in original assessment of Rs.15,87,164/- was not contended by the Appellant's Representative. The Appellant prays to consider and grant appropriate relief.”

3. Briefly stated facts are that the assessee engaged in the business of manufacturing of slotted angles, racks and fabrication work under the name of FM Fabrication Company. 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 Rs. 7,58,082/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -



<i>Name of the hawala Dealer</i>	<i>Amounts of purchases</i>
<i>Nageshwar Enterprises</i>	<i>3,66,392/-</i>
<i>National Trading Co.</i>	<i>3,91,690/-</i>

4. The AO issued noticed under section 133(6) to the parties which returned back with the remark as "left" and assessee failed to produce these parties. During the course of assessment proceedings and during appellate proceedings, the assessee submitted 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 and accordingly, he made addition of unproved purchase of ₹ 7,58,082/- to the returned income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restricted the disallowance at 18% of the bogus purchases by observing in para 12 by following the decision of Hon'ble Gujarat High court in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj) & others by observing as under: -

"12. In the case of the assessee the goods purchased from M/s Nageshwar Enterprises and M/s National Trading Co were lying in stock of the assessee as at 31.03.2009. In order to ascertain that the goods had actually been consumed in the next financial year the assessee was directed to prove the consumption of the material in the subsequent financial year. The assessee has been able to file the necessary fabrication and sale invoices as well as debtor's ledgers in this regard. It is noted that the assessee is able to broadly prove that he had used the impugned purchases for manufacture. In view of the above discussion it is held that while the assessee is unable to substantiate his



purchases from the hawala dealers the assessee was able to prove consumption of the material. Therefore, it can only be presumed that the purchases of the assessee have been made from some other source because the Hawala dealers were not genuine traders at all and they had only supplied the purchase bills to the assessee. Therefore, it is reasonable to come to a conclusion that the assessee had sourced its materials from some other source or from the grey market and the only issue left was to decide the quantum of addition. It is seen that the assessee has declared a gross profit rate of 18% in the regular books of account maintained by it and it is held that the addition of a further sum calculated @18% of the bogus purchases of Rs. 7,58,082/- is sufficient to take care of the embedded profits in the purchases made from the grey markets. As a result the addition of Rs. 7,58,082/- is reduced to Rs. 1,36,455/- and the assessee gets a relief of Rs. 6,21,627/-. The grounds of appeal of the assessee are partly allowed as above.”

5. I have considered the issue and gone through the facts and circumstances of the case. I find from the facts of the case and argument of both the sides. The CIT(A) has confirmed the profit rate at the rate of 18%, which according to me is on higher side going by the nature of business of the assessee i.e. manufacturing of slotted angles, racks and fabrication work. I am in full agreement with the contentions raised by the assessee before CIT(A) and according to me a profit rate of 18% is on



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higher side as assessee has also paid the VAT element on these bogus purchases, a further deduction in estimation of profit to the extent of 5.5% can be allowed. Hence, I direct the AO to recompute the income after applying profit rate at the rate of 12.5% and compute the income accordingly. The appeal of the assessee is partly allowed.

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

Order pronounced in the open court on 24-10-2018.

आदेश की घोषणा खुले में दिनांक 24-10-2018को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 24-10-2018

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