

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR**

आयकर अपील सं./I.T.A. No. 3131/Ahd/2015

(निर्धारण वर्ष / Assessment Year : 2009-10)

Shri Nilesh Rameshchandra Shah Prop: Shagun Art, 8, Ram Shyam Apartment, Nr. L.G. Hospital, Maninagar, Ahmedabad - 380008	बनाम/ Vs.	The ACIT, Circle -12 [Now DCIT, Cir. 6(1)], 1 st Floor, Narayan Chambers, Ashram Road, Ahmedabad - 380009
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AFQPS3070R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Dhiren Shah, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Mudit Nagpal, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	17/10/2018
घोषणा की तारीख /Date of Pronouncement	31/10/2018

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-6, Ahmedabad ('CIT(A)' in short), dated 31.08.2015 arising in the assessment order dated 28.03.2014 passed by the Assessing Officer (AO) under s. 147 r.w.s. 143(3) of the Income Tax Act, 1961 (the Act) concerning assessment year 2009-10.

2. By way of its grounds of appeal, the assessee has raised solitary grievance towards addition on account of alleged bogus purchase amounting to Rs.1,28,53,148/-.

3. The assessee, a proprietor of M/s. Shagun Art, filed its return of income for AY 2009-10 which was subsequently reopened under s.148 of the Act. In the course of re-assessment proceedings, the AO noted that the assessee is engaged in the business of sale of gift articles. The AO observed that as per information received from VAT/Sales Tax Department, Mumbai, the assessee has received bogus bills of purchase from various parties aggregating to Rs.1,28,53,148/-. When confronted, the assessee responded by submitting that it is engaged in trading of gift articles and submitted purchase delivery challan as well as PAN of the creditors to support the purchases recorded. The challans of sales tax paid by the creditors were also produced. The assessee also pointed out that the sale of the products so purchased had been made to Asian Paints Ltd., and the sales have not been doubted nor could have been. The payments to the purchasers have been made through banking channel. The assessee also pointed out to the AO that the suppliers must have given wrongful statement to the detriment of others possibly to save their own skin towards unaccounted sales and put others into trouble and therefore such statements cannot be summarily relied without cross examination. The AO however discarded all the evidences and quantitative details and added the aforesaid amount of Rs.1,28,53,148/- to the total income of the assessee.

4. Aggrieved, the assessee preferred appeal before the CIT(A) without any success.

5. Further aggrieved, the assessee preferred appeal before the Tribunal.

6. The learned AR for the assessee vehemently submitted that assessee is merely a trader where every purchases matches with the corresponding sale. The learned AR adverted to the P&L account and submitted that out of total purchase of Rs.221.20 Lakhs recorded, the AO has alleged accommodation purchase to the tune of Rs.128.53 Lakhs which is more than 50% of the purchases. The corresponding sales stand at Rs.256.98 Lakhs. Therefore, when the purchases are deemed to be bogus as alleged by the AO, the corresponding sale and book result would be totally absurd and inexplicable. Without the purchase of the trading item as recorded, it is impossible to clock the corresponding sale of such amount. The sale consideration made to the reputed parties, like, Asian Paints Ltd. and the sales in any case have not been doubted. The learned AR thereafter referred to the trading and P&L account and submitted that it has declared profits at 7.31% of the turnover including similar profits on sale corresponding to alleged bogus purchases. The learned AR submitted that in such a fact-situation, where the assessee has already declared handsome profits on sales corresponding to purchase of the trading item, there was no warrant for the Revenue authorities to disbelieve the book results based on some unverified statement of suppliers recorded in sale tax proceedings and without their cross examination specifically demanded. The learned AR further supported its case by the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Gujarat Ambuja Exports Ltd. (2014) 43 taxmann.com 244 (Guj) and submitted that no disallowance is called for. The learned DR, on the other hand, relied upon the orders of the authorities below.

7. We have carefully considered the rival submissions and the orders of the authorities below. The maintainability of estimated disallowance out of alleged bogus purchases is in controversy. In this regard, we notice that the assessee is engaged in trading of goods and therefore every purchase gets matched by corresponding sales/closing stock. Thus, the scope of manipulation in bills towards purchase quantity is nearly non-existent. What at best thus can be manipulated is the price/value of the goods purchased. In other words, while it may be possible that purchases might have been made from bogus parties, nevertheless, the purchases themselves cannot be treated as bogus. The sale recorded in books is not in question. Contextually, the assessee had declared 7.31% towards profit on such alleged bogus purchases. As stated, the relevant documents including invoice, payment through banking channel, quantity tally were made available to the Revenue authorities. The cross examination of the suppliers was not provided despite requests. In these circumstances, we find considerable merit in the case of the assessee in the light of the decision of the Hon'ble Gujarat High Court in Gujarat Ambuja Exports (supra); CIT vs. Bholanath Poly Fab Pvt. Ltd. 355 ITR 290 (Guj) and the decision of the Hon'ble Supreme Court in the case of PCIT vs. Tejua Rohitkumar Kapadia arising out of the decision of the Hon'ble Gujarat High Court in Tax Appeal No.691 of 2017, judgment dated 18.09.2017. In view of the facts recorded, it is difficult to dispute the quantitative aspects of the purchases made. This leaves us to the limited aspect of pricing of alleged bogus purchase. Having regard to the facts and circumstances of the case and more particularly in view of profits already declared on alleged bogus purchases in the vicinity of 7%, we are of the view that an estimated disallowance of 5% alleged bogus purchases over and

above the profits already declared would cover possible suppression in profits and will balance the equity. Such estimation would also be in tune with the judgment of Hon'ble Gujarat High Court in Gujarat Ambuja Exports (supra). Accordingly, we direct the AO to restrict the estimated disallowance to Rs.6,42,657/- on account of alleged bogus purchase.

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

This Order pronounced in Open Court on 31/10/2018

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad: Dated 31/10/2018

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।