

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. 2544/Mum/2018

(निर्धारण वर्ष / Assessment Year 2010-11)

आयकर अपील सं./ ITA No. 2545/Mum/2018

(निर्धारण वर्ष / Assessment Year 2011-12)

Sukeshan Equipments Pvt. Ltd C/o. T.M.Gosher & Co., C. As., 12, Shivaji Fort Co-op. Hsg. Society Ltd., N.S. Mankikar Marg, Sion (East), Mumbai-400 022	Vs.	The Asst. Commissioner of Income Tax, Circle-1, Kalyan
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAACS5594E		

अपीलार्थी की ओर से / **Appellant by** : Shri GC Lalka, AR

प्रत्यर्थी की ओर से / **Respondent by** : Shri BS Bist, DR

सुनवाई की तारीख / Date of hearing:	01.11.2018
घोषणा की तारीख / Date of pronouncement :	01.11.2018



आदेश / ORDER

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

These two appeals by the assessee are arising out of the orders of Commissioner of Income Tax (Appeals)-2, Pune [in short CIT(A)], in appeal No. (New) PN/CIT(A)-2/ACIT Cir/KYN/751&752/2017-18, (Old) THN/CIT(A)-2/ACIT Cir/KYN/29&30/2015-16 of even date 08.01.2018. The Assessments were framed by the Asst. Commissioner of Income Tax, circle -1, Kalyan (in short 'ACIT/ AO') for the A.Ys. 2010-11 & 2011-12 vide orders of even date 10.03.2016 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only common issue in these appeals of assessee is against the orders of CIT(A) confirming the addition made by AO of entire bogus purchases at ₹ 3,86,340/- of the bogus purchase. 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 2010-11 and will decide the issue. For this Assessee has raised following ground in ITA No. 2544/Mum/2018 for AY 2010-11: -

"1. The appellant company engaged in the manufacture of pharmaceutical machinery and its spare parts in course thereof, it purchases goods from various parties including ₹ 3,86,340/- from four suppliers, who were termed as bogus by the Sales tax Department. The Assessing Officer erred in disallowing the same in total and on



second appeal, the same was sustained by the learned CIT(A), ignoring the submissions and decisions relied upon, especially in the company's own case."

3. Briefly stated facts are that the assessee engaged in the business of Manufacturing and trading of accessories used for engineering and pharma industries. 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. 386340/- for AY 2010-11 & ₹ 5,90,567/- for AY 2011-12 as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

2010-11

<i>Name of party</i>	<i>Amount</i>
<i>Nageshwar Enterprises</i>	<i>1,58,692</i>
<i>Leo Impex</i>	<i>1,38,972</i>
<i>S.S. Enterprises</i>	<i>88,676</i>
<i>Total</i>	<i>3,86,340</i>

2011-12

<i>Name of party</i>	<i>Amount</i>
<i>Nageshwar Enterprises</i>	<i>1,21,798</i>
<i>Vardj,am Traders</i>	<i>2,54,173</i>
<i>Shraddha Trading Co.</i>	<i>2,14,596</i>
<i>Total</i>	<i>5,90,567</i>

4. The AO issued noticed under section 133(6) to the parties which returned back 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 ₹ 3,86,340/- for AY 2010-11 & ₹ 5,90,567/- for AY 2011-12 to the returned income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who confirmed the addition made by the AO by observing in para 4.13 as under: -

“4.13 In the light of the aforesaid discussion on the facts, I find no merit in the arguments taken on behalf of the appellant. On the facts of adverse finding by the Sales Tax Department with regard to the alleged suppliers which were further corroborated during the assessment proceedings, it is held that the appellant was involved in Hawala transaction to the extent of purchase of ₹ 3,86,340/-. The appellant just procured accommodation bills without any actual transaction and therefore the addition made by the Assessing Officer is confirmed. The grounds raised are accordingly dismissed.”

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 that the CIT(A) has confirmed the entire bogus purchase at ₹ 3,86,340/-. I find that in both the years AO has not doubted the corresponding sales. Further, it is also not doubted that the payments are not by cheque. Hence, only inference is that the assessee has made



ITA no.2544 & 2545/Mum/2018

purchases from grey market and made sales and earned profit and save VAT. According to me a reasonable profit be estimated and going by the nature of business of the assessee i.e. Manufacturing and trading of accessories used for engineering and pharma industries, the AO to recompute the income after applying net profit rate at the rate of 8% of the bogus purchases and compute the income accordingly. The appeal of the assessee is partly allowed.

6. Similar are the facts in AY 2011-12 and hence, I direct the AO to apply net profit rate at the rate of 8% on the bogus purchases.

7. **In the result, both, the appeals of assessee are partly allowed.**

Order pronounced in the open court on 01-11-2018.

आदेश की घोषणा खुले में दिनांक 01-11-2018को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 01-11-2018

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