



**आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, MUMBAI**

श्री शक्तिजीत दे, न्यायिक सदस्य एवं  
 श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।  
**BEFORE SHRI SAKTIJIT DEY, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.5588/Mum/2016  
 (निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Shri Chaganlal Pukhraj Parmar</b> Mahaveer Universe, Maven, 1101 LBS Road, Bhandup(W) Mumbai-400 078.	<b>बनाम/</b> Vs.	<b>Income tax Officer-29(1)(2)</b> Mumbai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AGMPP-7757-P</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )
<b>Assessee by</b>	:	Shri Vimal Punmiya-Ld.AR
<b>Department by</b>	:	Awanghi Gimson-Ld. DR
सुनवाई की तारीख/ <b>Date of Hearing</b>	:	13/05/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	16/05/2019

**आदेश / O R D E R**

**Per Manoj Kumar Aggarwal (Accountant Member):-**

1. Aforesaid appeal by assessee for Assessment Year [AY] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-40, Mumbai, [CIT(A)], *Appeal No. CIT(A)-40/IT-759/2014-15* dated 14/07/2016 on following grounds of appeal: -



1. *On the facts and circumstances of the case and in law the Ld. CIT (A) erred in confirming the re-assessment proceeding u/s 147 initiated by the Ld. Assessing officer.*
2. *On the facts and circumstances of the case and in law the Ld. CIT(A) failed to consider that reassessment proceeding cannot be initiated:-*
  - a) *No reassessment can be made just to make an enquiry or verification.*
  - b) *Reassessment proceeding cannot be initiate merely on the information received from investigation wing.*
  - c) *Reassessment proceeding cannot be initiated when the LD. AO have reason to suspect and not reason to believe.*
3. *On the facts and circumstances of case and law, the Ld. CIT(A) erred in confirming the assessment order passed by Ld. AO u/s 143(3) r.w.s. 147 of income tax act, which is passed against the principal of natural justice.*
4. *On the facts and circumstances of the case the LD. CIT (A) erred in confirming the order of the Ld. Assessing Officer who failed to fulfill the condition of sec. 151.*
5. *On the facts and circumstances of the case the Ld. CIT (A) erred in confirming and rejecting the books of accounts of the assessee in view of section 145(3) of the I.T.Act, 1961.*
6. *On the facts and circumstances of the case and law, the Ld. CIT(A) directed the LD Assessing Officer to estimate the profit of 20% of the Purchases and erred in confirming the addition of Rs. 55,62,404/- ( i.e 20% of the purchases of Rs.2,78,12,020/-) in view of section 69C only on estimation and without any basis.*
7. *The Ld. CIT(A) erred in confirming the interest charged u/s234A, 234B, 234C & 234D of the I T Act.*
8. *The Ld. CIT(A) erred confirming the initiation of the Penalty Provisions u/s 271(1)(c) r.w.s. of the Income Tax Act.”*

The appeal is a recalled matter since the same was disposed-off by the Tribunal vide order dated 28/02/2018. However, the same was recalled vide MA No. 560/Mum/2018 order dated 28/02/2019 in view of the fact that certain grounds were remained to be adjudicated. Accordingly, the appeal has come up for fresh hearing before this bench.

2.1 Brief facts are that the assessee being *resident individual* stated to be engaged in *trading of iron & steel* under proprietary concern namely *M/s Maharashtra Metals* was assessed for impugned AY u/s 143(3) read with section 147 on 05/03/2015 by *Ld. Income Tax Officer-29(1)(2), Mumbai*



[AO] wherein the income of the assessee was determined at Rs.281.78 Lacs after sole addition on account of *alleged bogus purchases* for Rs.278.12 Lacs as against returned income of Rs.3.66 Lacs e-filed by the assessee on 22/09/2009 which was processed u/s 143(1). Besides validity of reassessment proceedings, the addition of Rs.278.12 Lacs as made by Ld. AO on account of *alleged bogus purchases* is the sole subject matter of present appeal before us.

2.2 The reassessment proceedings got triggered pursuant to receipt of certain information from *DGIT (Investigation) / Sales Tax Department, Maharashtra* wherein it transpired that the assessee stood beneficiary of accommodation purchase bills aggregating to Rs.278.12 Lacs from 12 suspicious entities, the details of which have already been extracted in *para 2* of the quantum assessment order dated 05/03/2015. Accordingly, the case was reopened u/s 147 by issuance of notice u/s 148 on 05/02/2014 which was followed by statutory notice u/s 142(1) wherein the assessee was directed to substantiate the aforesaid purchases.

2.3 Although the assessee defended the purchases made by him, however, notices issued u/s 133(6) to all the entities to confirm the transactions, were returned back unserved by the postal authorities. The inquiries conducted by Sales Tax Authorities revealed that the aforesaid parties were engaged in providing accommodation entries without carrying out any actual business which was also confirmed by these parties in the shape of statements / affidavits filed before Sales Tax Authorities. It was also observed that the delivery of material was not supported by any



delivery challans, lorry receipts etc. and mere payment through banking channels was not sufficient to prove the purchases. The assessee could not produce any of the suppliers to confirm the transactions and also failed to demonstrate delivery of material.

2.4 The assessee's statement u/s 131 was recorded on the basis of which conclusions were drawn that the assessee was not even able to identify the parties. No concrete reply, explanation or evidence could be adduced to prove the genuineness of the transactions. Resultantly, the books were rejected u/s 145(3) and aforesaid amount of Rs.278.12 Lacs was added to the income of the assessee as unexplained investment u/s 69C.

3.1 Aggrieved, the assessee agitated the same with partial success before Ld. CIT(A) vide impugned order dated 14/07/2016, wherein the assessee contested the validity of reassessment proceedings as well as additions on merits.

3.2 On legal ground, it was noted that the case was reopened within 4 years from the end of relevant AY and therefore, prior sanction before issue of notice was not mandated u/s 151(2). Further, the reassessment proceedings were triggered since scam was unearthed by the Sales Tax Department wherein several parties were found to be issuing hawala bills of accommodation entries and it was found that the assessee had taken such accommodation bills which suggested escapement of income in the hands of the assessee and the sufficiency of reasons, at this stage, was not material. Reliance was placed, *inter-alia*, on the decision of Hon'ble Apex Court rendered in **Rajesh Jhaveri Stock Brokers Pvt. Ltd. 291 ITR 500** to



arrive at a conclusion that the reassessment proceedings were perfectly valid. It was also observed that the first proviso to Section 147 was also not attracted. In the above background, the reassessment proceedings were held to be valid.

3.3 Proceeding further, the assessee's statement u/s 131 as recorded by Ld. AO was noted, on the basis of which it was observed that the assessee was unaware of the persons from whom the purchases were made and could not provide the address of the broker from whom such purchases were stated to be made. Further, the assessee expressed inability to produce evidence of delivery of goods. The material on record as well as assessee's submissions led the Ld. first appellate authority to form an opinion that the assessee failed to discharge the primary onus casted upon him to establish the genuineness of the transactions. In the above background, the ratio of decision of Hon'ble Apex Court rendered in **CIT Vs. Durgaprasad More 82 ITR 540** as well as **Sumati Dayal Vs. CIT 214 ITR 801** was applied to the factual matrix.

3.4 Proceeding further, in the background of various decisions of higher judicial authorities, Ld. CIT(A) proceeded to estimate the addition on account of *alleged bogus purchases* in view of the fact that the sales were accepted and therefore, the entire purchases could not be termed as *bogus purchases*. Therefore, the addition was to be restricted to account for element of profit embedded in purchases. Finally, *inter-alia*, following the decision of Hon'ble Gujarat High Court rendered in **CIT Vs. Simit P.Sheth [356 ITR 451]** & **CIT Vs. Bholanath Poly Fab. P. Ltd. [355 ITR 290]**, the



impugned additions were restricted to 20% of *alleged bogus purchases*. Aggrieved, the assessee is in further appeal before us.

4. The Ld. AR while contesting the reassessment proceedings, pleaded for reasonable estimation whereas Ld. DR submitted that the estimation was fair & reasonable.

5. We have carefully considered the same and deliberated on judicial pronouncements as relied upon. So far as the validity of reassessment proceedings is concerned, we concur with the stand taken by Ld. first appellate authority. The proceedings were triggered within 4 years from the end of relevant AY and therefore, sanction u/s 151(2) was not required and also, the first proviso to Section 147 was not applicable since the original return was processed u/s 143(1). The Ld. AO was clinched with tangible information in the shape of information from *Sales Tax Authorities* which *prima-facie* suggested possible escapement of income in the hands of the assessee. Hence, no infirmity could be found in triggering reassessment proceedings against the assessee. Ground Nos. 1,2, & 4 stands dismissed. Ground No.3 assailing violation of principle of natural justice would stand dismissed since nothing on record suggest that the assessee was not provided with sufficient opportunity of being heard and defend his case. Ground No. 5 assails rejection of books of accounts. However, we find that Ld. AO has only disturbed the purchases and partial relief has already been provided by first appellate authority. Therefore, there could be no occasion to be aggrieved by rejection of books since the issue is limited to estimation on account of *alleged bogus purchases* only. This ground stand dismissed.



6. So far as the quantum additions are concerned, we are of the considered opinion that there could be no sale without actual purchase of material keeping in view the assessee's nature of business. The sales turnover was not disputed by the Ld. AO and the assessee was in possession of primary purchase documents viz. copies of invoices and the payments were through banking channels. At the same time, notices issued u/s 133(6) elicited no satisfactory response. The assessee failed to produce any of the suppliers to confirm the transactions. In fact, the assessee, in statement u/s 131, could not even identify the suppliers. Therefore, Ld. CIT(A), in our opinion, clinched the issue in right perspective. However, keeping in view the fact that the applicable VAT rate on *iron & steel* was on lower side and the assessee was trading in low-margin item, we reduce the estimation to 5% of *alleged bogus purchases* of Rs.2,78,12,020/- which comes to Rs.13,90,601/-. The balance addition stand deleted. The impugned order stand modified to that extent. Ground No. 6 stands partly allowed.

7. Ground No. 7 & 8 assails interest charged u/s 234 and initiation of penalty u/s 271(1)(c). The same being mandatory / consequential / premature do not require our indulgence and hence, dismissed.

8. The appeal stands partly allowed.

*Order pronounced in the open court on 16/05/2019.*

**Sd/-**  
**(Saktijit Dey)**  
न्यायिक सदस्य / **Judicial Member**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**



मुंबई Mumbai; दिनांक Dated : 16/05/2019  
Sr.PS:-Jaisy Varghese

**आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai