

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Before Shri Shamim Yahya (AM)

I.T.A. No. 4000/Mum/2018 (Assessment Year 2008-09)  
I.T.A. No. 4001/Mum/2018 (Assessment Year 2009-10)  
I.T.A. No. 4002/Mum/2018 (Assessment Year 2010-11)  
I.T.A. No. 4003/Mum/2018 (Assessment Year 2011-12)  
I.T.A. No. 4004/Mum/2018 (Assessment Year 2012-13)

Shri Bharat Jagjivandas Shah C-202, Bhoomi Saraswati Ganjawala Lane S.V. Road, Borivali (West) Mumba-400 092.  PAN : AADPS7308C (Appellant)	Vs.	ITO 32(1)(3) Room No. 210 2 <sup>nd</sup> Floor C-II, Pratyakshkar Bhavan, BKC Bandra(Est) Mumbai-400 051. (Respondent)
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Assessee by	Shri Rajiv Khandewal
Department by	Shri Chaitanya Anjaria
Date of Hearing	11.6.2019
Date of Pronouncement	12.6.2019

ORDER

These are appeals by the assessee against respective orders of learned CIT(A) for concerned assessment years. Since issues are common and connected and appeals were heard together, these are being disposed of by this common order.

2. One common issue relates to disallowance on account of bogus purchases for A.Y. 2009-10, 2010-11 & 2011-12 for amount of Rs. 44,447, Rs. 64,751 & Rs. 19,688/- respectively. Impugned additions were made by the Assessing Officer from the information received from Sales Tax authority that the assessee was engaging into bogus purchases. The Assessing Officer has made disallowance of 12.5% of the bogus purchases.

3. Upon assessee's appeal, learned CIT(A) had confirmed the same. Against this appeal the assessee is in appeal before ITAT.

4. I have heard both the counsel and perused the records. Learned counsel of the assessee submitted that the assessee has shown sufficient gross profit on the said sales. He claimed that the disallowance of 12.5% should be made after deducting gross profit already shown. He claimed that otherwise it will be double prejudice to the assessee.

5. Upon careful consideration and hearing both the counsel, I find considerable cogency in the submission of the assessee. Disallowance of 12.5% has been made in this case to take into account profit made by the assessee on account of its dealing in grey market. Sales have not been doubted. Hence, in my considered opinion disallowance of 12.5% of the bogus purchases should be done after giving credit already shown by the assessee. I direct accordingly.

6. Another common issue raised for all assessment years is disallowance of following amount of depreciation :-

<u>Sr. No.</u>	<u>Assessment Year</u>	<u>Addition of non-genuine purchases</u>	<u>Disallowance of Depreciation</u>	<u>Disallowance of material consumed treating the same as capital expenditure</u>
1	2008-09	-	10,87,384	11,16,220
2	2009-10	44,447	14,30,715	21,40,290
3	2010-11	64,751	17,89,632	-
4	2011-12	19,688	15,83,433	-
5	2012-13	-	17,47,933	-

The assessee in this case is an individual engaged in the business of hiring of monsoon sheds. The main ingredients of the assessee in putting up of these sheds are bamboos, canvas, tarpaulins and packing materials, which are basically perishable in nature. The assessee had claimed 40% depreciation, while authorities below have restricted the same to 15%. It is the claim of the learned counsel of the assessee that these materials do not have any life. That

these are consumable material and they do not survive after the use in one monsoon. Hence, he claimed that the disallowance on account of depreciation should not at all be done. Rather, he claimed that disallowance of 100% should be allowed.

6. Upon careful consideration and hearing both the counsel, I find considerable cogency in the submissions of the assessee. However, I note that the assessee has himself claimed only 40% depreciation and it was based upon this depreciation that profitability had been calculated. In this view of the matter, 100% disallowance of depreciation can lead to distortion of gross profit ratio necessitating relook by the Assessing Officer. In these circumstances learned counsel agreed that allowance for depreciation can be restricted to depreciation claimed by the assessee. Accordingly, I in the background of the aforesaid discussion, set aside the orders of the authorities below and delete the disallowance on account of depreciation.

7. Another common issue raised in A.Ys. 2008-09 & 2009-10 is that disallowance of material consumed treating the same as capital expenditure. In this regard a sum of Rs. 11,16,220/- and Rs. 21,40,290/- respectively for A.Y. 2008-09 & 2009-10 were reported by the tax auditor as capital expenditure. Hence, the same were disallowed by the authorities below. However, in this regard learned counsel submitted that the facts remains that these materials were same as used in the assessee's business of monsoon sheds i.e. canvas, tarpaulins and packing materials and bamboos. Hence, learned counsel submitted that substance of material remains that these are consumable and cannot be treated as capital expenditure just because tax auditor has wrongly put it as capital expenditure.

8. Upon careful consideration and hearing both the counsel, I find considerable cogency in the submissions of the learned counsel. Accordingly, I direct that since these materials are in substance not capital in nature, no disallowance in this regard is called for.

9. In the result, these appeals by the assessee stand partly allowed.  
Order has been pronounced in the Court on 12.6.2019.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 12/6/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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