

**आयकर अपीलीय अधिकरण "F" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री श्री एम बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI M BALAGANESH, AM

**आयकर अपील सं./ ITA No. 3452/Mum/2018**

(निर्धारण वर्ष / Assessment Year 2013-14)

The Joint Commissioner of Income Tax (OSD)-CC-2(3), Central Circle-2(3), Room No. 803, 8 <sup>th</sup> Floor, Old CGO Annex Bldg, M.K. Road, Mumbai-400 020	Vs.	Shri Vaibhav Dipak Shah Prop. M/s Leo Gems 9/10, Dadarkar Building 5-7, V.P. Road, C.P. Tank Mumbai-400 004
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी/ Respondent)</b>
<b>स्थायी लेखा सं./PAN No. BBGPS2674L</b>		

अपीलार्थी की ओर से / Appellant by	:	Shri Sushil Kumar Poddar, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Sanjay R. Parikh, AR

सुनवाई की तारीख / Date of hearing:	15.07.2019
घोषणा की तारीख / Date of pronouncement :	15.07.2019

**आदेश / ORDER**

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

This appeal of Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-48, in short CIT(A), in appeal No. CIT(A)-48/48/I.T-36/DCCC-2(3)/2016-17 dated 21.03.2018. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle



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2(3), Mumbai (in short DCIT/ITO/ AO) for the A.Y. 2013-14 vide order dated 31.03.2016, under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance made on account of bogus accommodation entries. The Revenue has alleged that CIT(A) erred in admitting the additional evidences in violation of Rule 46A of Income Tax Rules, 1962 (hereinafter the 'Rules'). For this Revenue has raised the following grounds: -

*"1. On the (acts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowances of Rs.10,29,38,000/- made on account of bogus accommodation entries from Deep Enterprises and Payal Enterprises.*

*2. On the facts and circumstances of the case and in law the Ld.CIT(A) erred in admitting the additional evidence in the light of Rule 46A without appreciation the (act that sufficient opportunity was provided to the assessee to furnish the evidence in the form of purchases bills/invoices, lorry receipt, GRN, Weightment slip and delivery challan to prove the genuineness of the claim, during the course of assessment proceedings, however, assessee failed to furnish the requisite details."*

3. Brief facts are that the AO noted that the assessee has paid advances to the bogus parties amounting to ₹ 10,29,38,000/-. The AO



also noted that the assessee had made purchase from hawala parties to inflate its expenses. According to AO, the advances are also given to the same parties during the year which are as under: -

<b>Sr. No.</b>	<b>Name of the hawala Dealer</b>	<b>TIN Number</b>	<b>Total Amount</b>
1.	Deep Enterprises	27750595164V	5,74,46,000
2.	Payal Enterprises	27870658730V	4,54,92,000
		Total	10,29,38,000

4. According to AO, the assessee could not prove the genuineness of advances given to the bogus parties. He, therefore, added the amount of ₹ 10,29,38,000/-. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) deleted the addition after going through the accounts statement of the assessee and noting that there is no purchase made from these two parties during the year. However, advances were given to them. It was also noted by the CIT(A) that once these advances are out of books of account and reflected in the balance sheet, the same are explained. The CIT(A) further noted that merely on the basis of advance given no addition is warranted even if parties are providing accommodation entries. Aggrieved, Revenue is in appeal before us.

5. We have noted from the audited accounts of the assessee that as on 31.03.2013 there are total advance made by assessee to the amount of ₹ 12,98,64,119/-, out of which advances given to two parties namely M/s Deep Enterprises and Payal Enterprises, which are declared as hawala parties by the sale tax authorities, the assessee has made advances to the tune of ₹ 10,29,38,000/-. We noted from the balance sheet and other financial details that the assessee has not made any purchase from these parties but given advances to them. These



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advances are fully reflected in the books of account including the balance sheet. The advances are not held unexplained. Hence, we are of the view that the CIT(A) has rightly deleted the addition and we confirm the same. The appeal of Revenue is dismissed.

**6. In the result, the appeal of Revenue is dismissed.**

Order pronounced in the open court on 15.07.2019.

Sd/-

(एम बालगणेश / M BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 15.07.2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित/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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai