

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. 2151/Mum/2016

(निर्धारण वर्ष / Assessment Year 2009-10)

Hiren Narayandas Shah Prop. Riddhi Siddhi Enterprises, Rameshwar Steel, Co., Kolkhe Village Mumbai-Pune Road, Panvel, Dist.Raigad, PIN-410 206	Vs.	The Income Tax Officer, Ward-2, Panvel, 2 nd Floor, Trifed Tower, Opp. Khanda Colony, New Panvel, PIN 410206
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AEIPS0593Q		

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से / Respondent by	:	Shri Rajiv Gubgotra, DR

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 assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-2, Thane, in short CIT(A), in ITA No.026/14-15 dated 28.01.2016. The Assessment was framed by the



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Income Tax Officer, Ward-2, Panvel (in short ITO/ AO) for the A.Y. 2009-10 vide order dated 14.02.2014, under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) directing the AO to restrict the addition made by AO being estimating profit percentage at the rate of 25 % on bogus purchases. For this assessee has raised following ground: -

"1. The Hon. CIT(A) erred in not appreciating that the re-opening of assessment u/s 147 of the I. Tax Act 1961, by issue of the notice u/s 148 on 26.03.2013, was without any independent and valid belief held by the Id AO that any income chargeable to tax had escaped assessment, thereby making the re-opening bad-in law and meriting the assessment order allowing therefrom to be quashed.

2. The Hon. CIT (A) erred in confirming the addition to the extent of Rs. 7,59,809/- as suppressed gross profit, after rejecting the book results u/s 145(3) of the IT Act 1961 as,

(i) the Id AO had not estimated such gross profit after rejecting the book results u/s 145(3) and the Hon. CIT (A) could not do so without granting the appellant opportunity to show cause as provided u/s 251(2) of the IT Act 1961.



(ii) the addition made by the Id AO in respect of alleged bogus purchases was not appropriate considering that the appellant had adequately established the genuineness of purchases with the help of substantial evidences including quantitative analysis and matching of each purchase with subsequent sale.

(iii) the opportunity to cross examine the source of alleged adverse evidences was never granted to the appellant inspite of specific request for the same.”

3. Briefly stated facts are that the assessee engaged in the business of trading in Iron, Steel & cement on semi-wholesale basis. 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. 28,61,859/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

Sr. No.	Name	Amount
1.	Balaji Trading	2,99,996/-
2.	Maulik Steel Corporation	1,00,000
3.	Centurian Sales Corporation	5,00,063
4.	Mahavir Enterprises	3,00,283
5.	V.M. Udyog	3,00,387



6.	Hiten Enterprises	13,61,130
	Total	28,61,859

4. 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 at 28,61,859/- to the returned income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restricted the disallowance at 25% of the bogus purchases by observing in paras 7.4 to 7.6 by observing as under: -

“7.4 In view of these facts, the appellant was requested to furnish the comparative details of GP/ NP and rates for the year, last two years and subsequent years. In compliance, the appellant filed the following details.

A. Yr.	Sales (Rs)	GP	% of GP	NP	% of age of NP to T/O
2007-08	74,51,060	2,42,527	3.27	1,28,132	1,71%
2008-09	3,59,92,241	7,18,148	2.00	3,41,449/-	0.95%
2009-10	5,71,28,320	11,08,805/-	1.94	5,08,214	0.98%
2010-11	7,68,90,50	16,42,722/-	2.14	6,66,008/-	0.87%
2011-12	10,49,58,546/-	20,76,521	1.98	9,76,920/-	0.93%

7.5 From the above details, it is noticed that the appellant had affected the purchases of Rs.28,61,859/- from hawala parties, against total turnover of Rs.5.71 crs. It is further noticed that the appellant had declared the insignificant profit of Rs.5,08,214/- @0.89% against total turnover of Rs.5.7 lacs., which is quite at lower



side, looking to the prevailing rate in the trade. Here the question arises that when the appellant was able to procure major pan of purchases. approximately 94% from regular suppliers, then what was need to buy the above small quantum of similar item from the hawala parties. The appellant, however, could not offer any valid explanation, with credible documents, on which the reliance could be placed.

7.6 In this case, the AO has not disputed the sales made by the appellant, therefore the corresponding purchases cannot be ruled out. This is not the case where entire cash has been siphoned off by debiting the bogus purchases. In my considered opinion, this is a case where the expenses, at the most, might had been inflated, by booking unverifiable purchases. From the above details it is seen that the OP rate, in the year under appeal, has gone down substantially low i.e. 1.94% from 3.27% in A Yr 2007-08. This shows that the appellant is capable of harvesting OP @3.2%. from the items traded by him. In compliance, the Ld. AR, could not substantiate the fall in OP with supporting documents. From the above chart, it is crystal clear that the appellant has suppressed gross profit by 1.33% (3.27% -



1.94%). The suppressed Gross profit is worked out at Rs.7,59,807/- (Its. 5,71,28,320/- x 1.33/100). In this regard. the reliance is placed on the decision of the Hon'ble Supreme Court in the case of *MIs Kanchwala Gems Vs JCIT*, 288 ITR 10 (SC), wherein, on account of similar set of circumstances, the estimation of OP was held, as justified. PM

Since the suppression of profit i.e.Rs.7,59,809/-, as worked above, is more than the disallowance of 25% of hawala purchases i.e. Rs 7,15,465/- (25% of Rs. 28,61,859/-), therefore the disallowance to the extent of ₹ 759809/- is liable to sustained. Accordingly, the disallowance of ₹ 7,59,809/-, out of hawala purchases of ₹ 28,61,859/-, is hereby sustained and balance amount of ₹ 21,02,050/- is deleted.”

5. We have considered the issue and gone through the facts and circumstances of the case. We find from the facts of the case that the CIT(A) has restricted the profit rate at the rate of 25%, which according to us is on higher side going by the nature of business of the assessee i.e. trading in Iron, Steel & cement on semi-wholesale basis. We are in agreement with the contentions raised by the assessee before CIT(A) and according to us a profit rate of 25% is on higher side by going through the nature of the business of the assessee and the fact that the business of Iron, Steel & Cement does not give higher profits. Even, the assessee has paid the VAT element on the bogus purchases. Hence, we



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direct the AO to recompute the income after applying 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. In the result, the appeal assessee is partly allowed.

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