



ITA No.1842/Mum/2018  
Anil P. Sawardekar  
Assessment Year :2009-10

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.1842/Mum/2018  
(निर्धारण वर्ष / Assessment Year:2009-10)

<b>Income Tax Officer-21(1)(1)</b> Room No.103, 1 <sup>st</sup> Floor Piramal Chambers, Parel Mumbai-400 012.	<b>बनाम/ Vs.</b>	<b>Shri Anil P. Sawardekar</b> Room No.234, Kamgar Nagar No.2, Near Bombay Dyeing Mill, New Prabhadevi Road Mumbai-400 088.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>BINPS-1468-Q</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Revenue by</b>	:	Shri Satish Chandra Rajore- Ld. DR
<b>Assessee by</b>	:	Shri Amit Jhaveri - Ld.AR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	31/07/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	01/08/2019

**आदेश / ORDER**

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

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-33, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)-33/Rg.21/164/2015-16* dated 15/01/2018 on following grounds of appeal: -



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1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in restricting the disallowances on bogus purchases of Rs. 1,38,06,689/- to 25% of such purchases i.e. Rs. 34,51,671/- by relying upon the decision of the Hon'ble ITAT Ahmedabad, in case of Vijay Proteins Pvt. Ltd. Vs. CIT (58 ITD 428), without appreciating that the facts of the instant case are distinguishable in that no details whatsoever regarding the alleged bogus purchase transactions were submitted during assessment proceedings.
2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact the primary onus is on the assessee to prove the genuineness of the purchases claimed by the assessee and the assessee has not discharged the same.
3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in admitting the additional evidence which is in contravention of Rule 46A of the Income tax Rules, 1962.
4. The appellant prays that the order of the Ld.CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

2.1 Facts in brief are that the assessee being resident individual engaged in trading activities was assessed for year under consideration u/s 144 r.w.s. 147 of the Income Tax Act, 1961 wherein the assessee was saddled with certain additions on account of *alleged bogus purchases* for Rs.138.06 Lacs.

2.2 The reassessment proceedings were triggered as per due process of law, pursuant to receipt of certain information from DGIT (Investigation), Mumbai that the assessee obtained *hawala* purchase bills aggregating to Rs.138.06 Lacs from 5 entities, the details of which have already been extracted in para-3 of the assessment order. The assessee could not defend the purchases made by it from the stated entities and notices issued u/s 133(6) to all the entities were returned back unserved in all the cases. The factual matrix led the Ld. AO to disbelieve the stated purchase transactions and accordingly, the same were added back to the income of the assessee while framing the assessment.



2.3 Before Ld. first appellate authority, the assessee contested the quantum additions on merits by way of elaborate written submissions, which have already been reproduced in the impugned order and hence not repeated here for the sake of brevity. The assessee, *inter-alia*, submitted that there was direct nexus between sales and purchase and the books of account were duly audited as per law. The payment to all the suppliers was through banking channels and there could be no sale without actual purchase of material. The Ld. first appellate authority, after due consideration of factual matrix and relying upon 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]** restricted the impugned additions to 25% of *alleged bogus purchases*. Aggrieved, the revenue is in further appeal before us.

2.4 The Ld. DR has advanced arguments to submit that the additional evidences filed by the assessee during appellate proceedings were not confronted to Ld. AO. It has further been submitted that Ld. CIT(A) was not justified in providing quantum relief to the assessee. On the other hand, Ld. AR submitted that impugned order would not require any interference on our part.

3. We have heard the rival submissions and perused relevant material on record and deliberated on judicial pronouncements as cited before us. 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 activities. The assessee was in possession of primary purchase documents and the payments to the suppliers were through banking channels. At the same time, notices issued u/s 133(6) to confirm



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the transactions did no elicit any satisfactory response from any of the suppliers and the assessee failed to produce even a single supplier to confirm the purchase transactions. The delivery of material remained unsubstantiated. Therefore, in such a situation, the addition, which could be made, was to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against such bogus purchases, which Ld. first appellate authority has rightly done. Therefore, the impugned order, in our opinion, would not require any interference on our part in view of the fact that Ld. CIT(A) has clinched the issued in proper perspective.

4. In result, the appeal stands dismissed.

*Order pronounced in the open court on 01<sup>st</sup> August, 2019.*

**Sd/-**

**(Mahavir Singh)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 01/08/2019  
Sr.PS, Jaisy Varghese

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**