



Dattakumar Pandharinath Jambavalikar
Assessment Years 2009-10 & 2010-11

आयकर अपीलीय अधिकरण “एक-सदस्य मजलम” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” 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

आयकरअपील सं./ I.T.A. No.4976/Mum/2018
(निर्धारण वर्ष / Assessment Year:2009-10)

&

आयकरअपील सं./ I.T.A. No.4970/Mum/2018
(निर्धारण वर्ष / Assessment Year:2010-11)

Income tax Officer-27(1)(4) Tower 6, 4 th Floor Room No.409 Vashi Railway Station Complex, Vashi, Navi Mumbai.	बनाम/ Vs.	Dattakumar Pandharinath Jamavalikar 10, Lilla Vila, Govandi Road Chembur Mumbai-400 071.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ABOPJ-4112-H		
(आपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Ashutosh Rajhans-Ld.DR
Assessee by	:	None

सुनवाई की तारीख/ Date of Hearing	:	09/09/2019
घोषणा की तारीख / Date of Pronouncement	:	09/09/2019

आदेश / ORDER

Per Bench: -

1.1 Aforesaid appeals by revenue for Assessment Years [AY] 2009-10 & 2010-11 contest separate orders of first appellate authority. Since common



issues are involved and facts are identical, we dispose-off the appeals by way of this common order for the sake of convenience & brevity. None has appeared for assessee and therefore, the matter is proceeded with *ex-parte qua* the assessee.

1.2 The appeal for AY 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-24 Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-24/IT-550/16/ITO-27(1)(4)/2017-18* dated 09/05/2018 *qua* deletion of certain additions on account of *alleged bogus purchases*. The grounds raised by revenue read as under: -

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.1,43,138/- made by the Assessing Officer on account of bogus purchases, without appreciating the fact that the assessee had failed to produce bills, vouchers and other documentary evidences in support of his claim and without considering the latest Apex Court decision in the case of N K Protein Ltd. wherein it is held that once it is proved that the purchases are bogus then addition should be made on entire purchases and not on profit element embedded in such purchases.
2. On the facts and circumstances of the case, the Ld. CIT(A) erred in estimating the profit from Hawala Purchases by disallowing only Rs.40,067/- being 21.87% of the bogus purchases as even the basic onus of producing transport bills, delivery challans etc. were not fulfilled by the assessee.

2.1 Facts on record would reveal that the assessee being resident individual stated to be engaged in aluminum fabrication under proprietorship concern namely M/s Aastha Cleanroom Systems, was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 18/02/2016 wherein the income of the assessee was determined at Rs.14.24 Lacs after sole addition of *alleged bogus purchases* for Rs.1.83 Lacs as against returned income of Rs.10.49 Lacs filed by the assessee on 22/09/2009 which was processed u/s.143(1).



2.2 Pursuant to receipt of certain information from investigation wing / Sales tax Department, Govt. of Maharashtra, it transpired that the assessee stood beneficiary of alleged bogus purchases to the tune of Rs.1.83 Lacs from an entity namely M/s Rupani & Co. Accordingly, as per due process of law, re-assessment proceedings were initiated against the assessee u/s 147 by issuance of notice u/s 148 on 27/03/2015. In response, the assessee offered original return of income. The statutory notices u/s 143(2) & 142(1) were issued in due course wherein the assessee was directed to substantiate the purchase transactions.

2.3 The assessee defended the purchases by submitting that the material purchased from the said supplier was utilized in the manufacturing process. However, the assessee remained unable to produce the supplier which led the Ld. AO to disallow these purchases. The learned first appellate authority, relying upon the decision of Hon'ble Gujarat High Court rendered in **CIT V/s Simit P. Sheth [356 ITR 451]** restricted the addition to the extent of GP Rate i.e. 21.87% of disputed purchases which came to Rs.40,067/- and deleted the balance additions. Aggrieved, the revenue is in further appeal before us. It appears that the assessee is not in further appeal. We have heard and considered the arguments raised by Ld. DR before us.

3. We are of the considered opinion there could be no sale without actual purchase of material keeping in view the assessee's nature of business. The assessee was in possession of primary purchase documents and the payments to the supplier was through banking channels. The sales turnover reflected by the assessee has not been disturbed / disputed by Ld.



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AO. However, at the same time, the assessee miserably failed to substantiate the purchases during assessment proceedings. Under such circumstances, the additions which could be sustained, 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, concurring with the approach of learned first appellate authority in restricting the additions to the extent of GP rate, we dismiss the appeal. So far as the decision of Hon'ble Gujarat High Court rendered in **N.K. Industries Ltd. Vs DCIT [72 Taxmann.com 289]** is concerned, we find that the facts of that case has already been distinguished by Hon'ble Bombay High Court in **Pr.CIT Vs. M/s Mohommad Haji Adam & Co. [ITA No.1004 & others of 2016, dated 11/02/2019]** wherein Hon'ble Court has approved the estimation, on similar factual matrix, based on Gross Profit Rate.

4. Facts are pari-materia the same in AY 2010-11 wherein the assessee was saddled with addition of Rs.1.08 Lacs on account of *alleged bogus purchases* in an assessment framed u/s 143(3) r.w.s.147 on 29/01/2016. The first appellate authority confirmed the same to the extent of GP rate i.e. 19.83%. Aggrieved, the revenue is in further appeal before us. Since the facts are identical, our observation, conclusion as well as adjudication as for AY 2009-10, shall *mutatis mutandis* apply to this year also.

5. In result, both the appeals stand dismissed.



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Order pronounced in the open court on 09th September, 2019.

Sd/-
(Mahavir Singh)
न्यायिक सदस्य / **Judicial Member**

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

मुंबई Mumbai; दिनांक Dated : 09/09/2019
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.