



ITA No.4992/Mum/2018

A.Y. 2009-10

Mr. Manish S.Rajani

आयकर अपीलीय अधिकरण “एक-सदस्य मजल” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

मजनीय 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

आकरअपील सं./ I.T.A. No.4992/Mum/2018
 (निर्धारण वर्ष / Assessment Year:2009-10)

Mr. Manish S. Rajani Block No. A-145, Room No.289. Kurla Camp Road Ulhasnagar-421 004.	बनाम/ Vs.	Income tax Officer -Ward 2(2) 2nd Floor, Mohan Mansion Wayale Nagar, Khadakpada Kalyan (West)-421 301.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ACXPR-7906-B		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Ashutosh Rajhans-Ld.DR
Assessee by	:	Shri Neha Paranjpe-Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	11/09/2019
घोषणा की तारीख / Date of Pronouncement	:	11/09/2019

आदेश / O R D E R

Per Bench: -

1. Aforesaid appeal by assessee for Assessment Year [AY] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-3, Thane,



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[in short referred to as 'CIT(A)'], *Appeal No.ITA No.332-THN/14-15* dated 20/06/2018 on following grounds of appeal: -

1. The Ld. Commissioner of Income Tax (Appeals)-III, Thane [here in after referred to as " Ld CIT (A)"] erred in passing the order date 20-06-2018 disallowance @ 25% of Rs. 1102816/- works out @ Rs. 2,75,704/- are retained & relief is partly given @ Rs.827112/- in place of full Rs.1102816/-. The Appellant prays that additions of Rs. 1102816/- made u/s 69 of I.T. Act by LT.O. Ward 2(2) at Kalyan on a/c of so called hawala purchases be deleted.
2. Penalty u/s 271(l)(c) was levied @ Rs. 330992/-. Penalty order was passed before service of notice & assessment order. Ld. C.I.T. (A) - III erred by not passing any order on the penalty so levied illegally.
3. An appeal fee payable @ Rs. 10000/- is paid challan is submitted herewith.
4. Additions made by I.T.O. @ Rs.1102816/- & Ld. C.I.T. (A) -III at Thane retained addition @ 25% @ Rs. 275704/-are unjustified, may kindly be deleted.
5. Penalty u/s 271(l)(c) Rs. 330992/- may kindly be deleted.

2.1 Facts on record would reveal that the assessee being resident individual was assessed for impugned AY u/s. 144 r.w.s. 147 on 24/10/2013 wherein the income of the assessee was determined at Rs.15.07 Lacs after sole addition of *alleged bogus purchases* for Rs.11.02 Lacs as against returned income of Rs.4.05 Lacs filed by the assessee on 17/09/2013 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.11.02 Lacs from 3 parties, the details of which has already been extracted at para-2 of the quantum assessment order. 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 15/04/2013 which remained un-responded to which led the Ld. AO to frame the assessment on best judgment basis. Relying upon the investigations being carried out by Sales Tax Department, the stated purchases were disallowed and added to the income of the



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assessee. The learned first appellate authority, after considering remand report and assessee's submissions, restricted the additions to 25%. Still aggrieved, the assessee is under appeal before us. It appears that the revenue is not in further appeal before us.

3. The respective representatives have advanced arguments, which we have duly considered.

4. 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 suppliers were through banking channels. The sales turnover has not been disputed / disturbed by the revenue. However, at the same time, notice issued u/s 133(6) to all the entities remained unserved and the assessee miserably failed to substantiate the purchases. 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. However, finding the estimate to be on the higher side, we reduce the same to 12.5%. the same comes to Rs.1,37,852/-. The impugned order stand modified to that extent. The ground relating to penalty, being pre-mature, would not require any adjudication at this stage and therefore, dismissed.

5. Resultantly, the appeal stands partly allowed.



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Order pronounced in the open court on 11th September, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 11/09/2019

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.