



ITA No. 6164/Mum/2018
AY 2010-11
Shri Govindram H. Dupra

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.6164/Mum/2018
(निर्धारण वर्ष / Assessment Year:2010-11)

ACIT-32(1) Room No.209, 2 nd Floor C-11, Pratyakshkar Bhavan BKC, Bandra East Mumbai-400 051.	बनाम/ Vs.	Shri Govindram H. Depra Gala No.1, H.T. Desai Comp. S.P. Road, Dahisar East Mumbai-400 068.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ADSPD-2752-K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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

सुनवाई की तारीख/ Date of Hearing	:	12/09/2019
घोषणा की तारीख / Date of Pronouncement	:	12/09/2019

आदेश / ORDER

Per Bench: -

1. Aforesaid appeal by revenue for AY 2010-11 contest the order of Ld. Commissioner of Income-Tax (Appeals)-45, Mumbai, [in short referred to as



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'CIT(A)'], *Appeal No. CIT(A)-45/ACIT-32(1)/ITA-13/2017-18* dated 18/07/2018 on following grounds of appeal: -

(1) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition to Rs.2,09,437/- @ 12.5% of Rs.16,75,498/- on account of bogus purchases, without appreciating the fact that the Sales Tax Department has proved beyond doubt that the parties declared as hawala traders were involved in providing accommodation entry of purchases and the assessee was one of the beneficiary of accepting accommodation or the purchase."

(2) " On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the assessee failed to provide the copy of bills from the 6 parties and neither could produce them for verification, in spite of opportunity provided by the AO."

(3) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the ratio of the decision of Gujarat High Court in the case of N.K. Proteins Ltd. wherein it was confirmed that in the event of bogus purchases, the addition on the whole of such purchases was required to be made and this particular ratio was confirmed by Hon'ble Supreme Court in SLP No. CC No.769 of 2017 dated 16.01.2017, by dismissing the SLP of that assessee."

(4) "The appellant prays that the order of the CIT(A) on the above grounds be set side and that of the AO be restored."

None has appeared for assessee and therefore, the matter is proceeded with *ex-parte qua* the assessee.

2.1 Facts on record would reveal that the assessee being resident individual stated to be engaged in labour job work under proprietorship concern namely M/s Bhagwati Interiors, was assessed for impugned AY u/s. 143(3) on 15/03/2013 wherein the income of the assessee was determined at Rs.42.18 Lacs after addition of *alleged bogus purchases* for Rs.16.75 Lacs as against returned income of Rs.25.43 Lacs e-filed by the assessee on 29/09/2010.

2.2 During assessment proceedings, it transpired that the assessee made purchases aggregating to Rs.16.75 Lacs from 7 entities, the details of which have already been extracted at para-4.1 of the quantum assessment order. These entities were listed as suspicious dealers by Sales Tax Department,



Govt. of Maharashtra. Accordingly, the assessee was directed to substantiate the purchases made from above entities.

2.3 The assessee defended the purchases, *inter-alia*, by submitting that the payments were through banking channels. However, the assessee failed to produce any of the supplier for confirmation of the transactions. Hence, not satisfied, the aforesaid purchases were disallowed and added to the income of the assessee. The learned CIT(A), after considering the factual matrix, restricted the additions to 12.5% of these purchases. Aggrieved, the revenue is in further appeal before us. It appears that the assessee has not appealed any further.

3. We have heard and considered the arguments made by Ld. DR.

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 the supplier was through banking channels. The sales turnover reflected by the assessee has not been disturbed / disputed by Ld. AO. However, at the same time, the assessee miserably failed to substantiate the purchases and could not produce any of the supplier to confirm the transactions. 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



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done. Therefore, finding no infirmity in the estimation made by Ld. CIT(A), we dismiss the appeal.

5. In the result, the appeal stands dismissed.

Order pronounced in the open court on 12th September, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 12/09/2019
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.