



ITA No.5079-80/Mum/2018
Bhadresh Jayantilal Shah
Assessment Years 2009-10 & 2010-11

आयकर अपीलीय अधिकरण “एक-सदस्य मजमल” 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

आयकर अपील सं./ I.T.A. No.5079/Mum/2018
(निर्धारण वर्ष / Assessment Year:2009-10)

&

आयकर अपील सं./ I.T.A. No.5080/Mum/2018
(निर्धारण वर्ष / Assessment Year:2010-11)

Income Tax Officer-Ward-3(1)-Kalyan 2 nd Floor, Rani Mansion Kalyan-Murbad Road Nr. SBI, Kalyan (W)-421 301.	बनाम/ Vs.	Shri Bhadresh Jayantilal Shah B-106, Shivam Apartment Veer Sawarkar Road, Dombivali (E) Mumbai-421 201.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AEEPS-2956-R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Akhtar H. Ansari-Ld.DR
Assessee by	:	Shri Vimal Punamia-Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	17/09/2019
घोषणा की तारीख / Date of Pronouncement	:	17/09/2019

आदेश / O R D E R

Per Bench: -

1. Aforesaid appeals by revenue for Assessment Years [in short referred to as AY] 2009-10 and 2010-11 contest common order of Ld. Commissioner of Income-Tax (Appeals)-1, Thane, [in short referred to as CIT(A)], ITA



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No.932 & 931/14-15 dated 25/06/2018. The grounds raised in AY 2009-10

reads as under: -

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was justified in not appreciating the law correctly that once the purchases are unverifiable/not genuine/bogus, the same should have been disallowed in entirety?".
2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in law by not appreciating the fact that the assessee could not establish the genuineness of the purchases from the non-existent vendors?
3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in law by not appreciating the fact that the onus to justify the claim of expenses is on the assessee and the same has failed to discharge it in relation to the purchases made from the non-existent vendors?.
4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in law by ignoring, the fact that the assessee could not substantiate its claim of purchases from non-existent vendors by means of relevant supporting documents related to movement and delivery of goods, stock register, etc. to arrive at disallowance at 25% of the purchases from the non-existent vendors?
5. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was justified in not appreciating the law correctly that once the purchases are unverifiable / not genuine / bogus, the same should have disallowed in entirety, particularly in view of the ratio of the decision of the Hon'ble Gujarat High Court in Tax Appeal No. 242 of 2003 dated 20/06/2016 in the case of N.K. Proteins Ltd. against which the SLP was dismissed by the Hon'ble Apex Court?

We have heard and considered the arguments advanced by both the representatives.

2.1 Facts for AY 2009-10, in brief, are that the assessee being resident individual stated to be engaged in trading of iron & steel items under proprietorship concern namely M/s Shalibhadra Steel, was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 30/12/2014 wherein the income of the assessee was determined at Rs.12.57 Lacs, after sole addition of *alleged bogus purchases* for Rs.10.85 Lacs as against returned income of



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Rs.1.71 Lacs e-filed by the assessee on 25/09/2009 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.10.85 Lacs from an entity namely M/s S.M.Trading 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 followed by statutory notices u/s 143(2) & 142(1) wherein the assessee was directed to substantiate the purchase transactions.

2.3 Although, the assessee defended the purchases, however, notice issued u/s 133(6) to the said entity remained unserved as well as un-responded to. The assessee failed to substantiate delivery of material and also failed to produce the said supplier to confirm the transactions which led the Ld. AO to believe that the assessee remained unsuccessful in discharging the onus casted upon him, in this regard. Consequently, the books were rejected u/s 145(3) and the said purchases were added to the income of the assessee. The learned appellate authority, applying the provisions of Section 44AF, estimated assessee's income @5% of the turnover. The stand of first appellate authority, considering the gross profits / net profit trends in other years, estimated the additions at 25% of the said



ITA No.5079-80/Mum/2018
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purchases. Aggrieved, the revenue is in further appeal before us. It appears that the assessee has not preferred any further appeal.

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 i.e. trading. The assessee was in possession of primary purchase documents and the payments to the supplier was through banking channels. However, at the same time, the assessee miserably failed to substantiate the purchases during assessment proceedings. Notice issued u/s 133(6) remained un-responded to. The assessee failed to prove the delivery of material. 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 learned first appellate authority has rightly done so. Therefore, concurring with the approach of Ld. CIT(A), we dismiss the appeal.

4. Facts are *pari-materia* the same in AY 2010-11 wherein the assessee was saddled with additions of Rs.1.46 Lacs on account of *alleged bogus purchases* in an assessment framed u/s 143(3) r.w.s. 147 on 30/12/2014. The first appellate authority restricted the same to 25%. The impugned order is common order for both the years. Hence, our observation, conclusion as well as adjudication as for AY 2009-10 shall *mutatis mutandis* apply to this year also. Resultantly, the appeal stands dismissed.



ITA No.5079-80/Mum/2018
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5. Both the appeals stand dismissed.

Order pronounced in the open court on 17th September, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 17/09/2019
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.**