

IN THE INCOME TAX APPELLATE TRIBUNAL "D"
BENCH, AHMEDABAD
BEFORE SHRI MANISH BORAD, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.646/Ahd/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

ITO, Ward-3(1)(3) 4 th Floor, 403 'B' Wing, Pratyaksh Kar Bhavan, Nr. Polytechnic College, Amwabadi Ahmedabad- 380015.	<u>बनाम/</u> Vs.	Rushabhdev Infra Project Pvt. Ltd. 509, Iscon Elegance, S. G. Highway, Satellite, Ahmedabad-380015.
--	----------------------------	---

I.T.A. No.794/Ahd/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

Rushabhdev Infra Project Pvt. Ltd. 509, Iscon Elegance, S. G. Highway, Satellite, Ahmedabad-380015.	<u>बनाम/</u> Vs.	ITO, Ward-3(1)(3) 4 th Floor, 403 'B' Wing, Pratyaksh Kar Bhavan, Nr. Polytechnic College, Amwabadi Ahmedabad- 380015.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFCR2520Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Vinod Tanwani (Sr. DR)	
Assessee by:	Shri M. S. Chhajed (AR)	

सुनवाई की तारीख / Date of Hearing: 18/09/2019
घोषणा की तारीख /Date of Pronouncement: 19/09/2019

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The Revenue as well as assessee have filed the above mentioned appeals against the order dated 05.01.2017 passed by the Commissioner of



Income Tax (Appeals)-9, Ahmedabad [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2013-14.

ITA. NO.646/Ahd/2017

2. The revenue has filed the present appeal against the order dated 05.01.2017 passed by the Commissioner of Income Tax (Appeals)-9, Ahmedabad [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2013-14.

3. We have heard the Ld. Representative of the parties and perused the record. During course of hearing, ld. DR for the revenue submitted that tax effect involved in this appeal filed by the revenue is less than Rs. 50 lacs and in view of latest CBDT circular No. 3/2018 dated 11-7-2018, and also modified circular No. 17/2019 dated 08/08/2019, appeal filed by the revenue is not maintainable and needs to be dismissed. The Ld. DR, further argued that, the issue involved in this appeal is appears to be covered by exception provided under clause (e) of subsequent circular and therefore, if required the revenue shall be allowed to file miscellaneous application to re-call the order. We, find that, the CBDT, recently had issued a circular no. 3/2018 dated 11-7-2018, superseding its earlier circular no. 21/2015 and enhanced monetary limit for filing appeal before various appellate authorities and accordingly, enhanced monetary limit to Rs.20,00,000/- for filing appeal before the Tribunal. Further, the board has issued one more circular vide **Circular no.17/2019 dated 08/08/2019** and enhanced monetary limit for filing appeal before appellate Tribunal to Rs. 50,00,000/- . Further, in the said circular, the CBDT had instructed its officer’s to file application for withdrawal of appeal already filed or not to pursue pending



appeals. We, therefore, by taking into account the CBDT circular No. 3/2018 dated 11-7-2018 and Circular no.17/2019 dated 08/08/2019 and also considering the fact that tax effect involved in the present appeal is less than the amount of monetary limit fixed by the CBDT for not filing appeal, dismissed appeal filed by the revenue as not maintainable. We, further noted that the Co-ordinate bench of ITAT, Ahmedabad 'A' Bench in ITA. No. 1398/Ahd/2004, vide order dated 14/08/2019 has passed detailed order considering new circular issued by the CBDT and held that except amendment to para 3 of the circular No.3/2018 dated 11/07/2018, all other portions of the circular No.03/2018 (supra) have remain in fact, therefore, this circular is applicable even for pending appeals and accordingly, rejected the arguments of the revenue that the effect of the circular shall come into force from the date of issue of this circular. Therefore, considering the facts and circumstances of this case and also taken note of circulars issued by the CBDT including circular No. 17/2019 dated 08/08/2019, and also by following the decision of Co-ordinate Bench, we dismissed appeal filed by the revenue as not maintainable. However, we keep open option to the revenue to file a miscellaneous application, if necessary, in case the issues involved in the present appeal comes within 3 exceptions as provided in para 10 of said circular and clause (e) of subsequent circular.

In the result, appeal filed by the revenue is hereby dismissed.

ITA. NO.794/Ahd/2017

4. The assessee has filed the present appeal against the order dated 05.01.2017 passed by the Commissioner of Income Tax (Appeals)-9,



Ahmedabad [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2013-14.

5. The assessee has raised the following grounds:-

- “ 1. The order passed by the Ld. CIT(A) is against law, equity & justice.*
- 2. The Ld. CIT(A) has erred in law and on facts in upholding addition to the extent of Rs.43,53,144/- being 25% of purchase as bogus purchase.*
- 3. The appellant craves liberty to add, alter, modify or amend any or all grounds of appeal before final hearing.”*

6. The brief facts of the case are that the assessee filed its return of income on 26.09.2013 declaring total income to the tune of Rs.Nil for the A.Y.2013-14. The assessment of the assessee was reopened under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee was in the business of Real Estate Development. During the search action of M/s Tricon construction some bogus dealers were identified. The Assessee was found beneficiary. The case of the assessee was reopened on the basis of the information received from the DIT(Inv.), Ahmedabad. The assessee has taken the bogus entries of six parties whose names are mentioned as under:-

1. Shri Bhavesh R. Patel (Prop. of Akshar Enterprises)
2. Shri Jivanlal H. Patel (Prop. of Arasuri Enterprise)
3. Shri Rahul V. Patel (Prop. Vaishvi Traders)
4. Shri Hiteshkumar G. Patel
5. Shri Kalpesh R. Patel
6. Shri Kamlesh Premjibhai Sondarva

7. Thereafter, the AO disallowed the said bogus purchase and added to the income of the assessee. Feeling aggrieved, the assessee filed an appeal



before the CIT(A) who restricted the addition to the extent of 25% of the bogus purchase. Feeling aggrieved, the assessee filed the present appeal before us.

8. We have heard arguments advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the assessee has argued that the CIT(A) has wrongly conformed the addition to the extent of 25% of the total bogus purchase in sum of Rs.43,53,144/-, therefore, the finding of the CIT(A) is liable to be set aside in the interest of justice. It is also argued that the transaction was effected through banking channel, therefore, the claim of the Assessee is not liable to be declined. The Ld Representative of the Department refuted the said contention. The case of the assessee was reopened upon the information received from the DIT(Inv.), Ahmedabad. The AO raised the addition to the extent of 100% of the total bogus purchase to the income of the assessee and accordingly taxed and the CIT(A) has also restricted the addition to the extent of 25% of the total bogus purchase of the assessee to the tune of Rs.43,53,144/-. The assessee is in the profession of Real Estate Development. It is settled that 100% of the addition is not justifiable. In this regard, we find support of law settled in case **CIT Vs. Nikunj Eximpt Enterprises (P) Ltd. (2013) 216 Taxman 171 (Bom)**. In case **CIT Vs. Simit P. Sheth (2013) 356 ITR 451 (Guj) (High Court)**, It is held that the addition is required to be added to the income of the assessee to the extent of income embedded in the bogus purchase. The sale is not disputed. On seeing the facts and circumstances of the case, we are of the view that the addition to the extent of 25% of the bogus purchase is very high, therefore, we restrict the addition of bogus purchase to the extent of 12.5% of the bogus purchase.



ITA. No.646/Ahd/17
794/Ahd/2017
A.Y. 2013-14

Accordingly, these issues are decided in favour of the assessee against the revenue.

9. In the result, the appeal filed by the revenue is hereby ordered to be dismissed and the appeal filed by the assessee is hereby ordered to be partly allowed.

Order pronounced in the open court on 19/09/2019

Sd/-

(MANISH BORAD)

लेखा सदस्य / ACCOUNTANT MEMBER

Ahmedabad दिनांक Dated : 19/09/2019

Vijay/Sr. PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA. No.646/Ahd/17
794/Ahd/2017
A.Y. 2013-14

आदेश की प्रतिलिपि अग्रेषित/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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

**(Assistant Registrar)
ITAT, Ahmedabad**