



ITA No.5096-97/Mum/2018
Mahendra Nandkishore Shah
Assessment Years 2010-11 & 2011-12

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

आयकर अपील सं./ I.T.A. No.5096/Mum/2018
(निर्धारण वर्ष / Assessment Year:2010-11)

&

आयकर अपील सं./ I.T.A. No.5097/Mum/2018
(निर्धारण वर्ष / Assessment Year:2011-12)

ACIT-Circle-3 (Kalyan) 2 nd Floor, Rani Mansion Murbad Road, Kalyan (W)-421 301.	बनाम/ Vs.	Shri Mahendra Nandkishore Shah Prop. of M/s. Shah Engineers B-402, Vinit Sadan, Rajaji Path Dombivli (E)-421 201.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ACSPS 3049 P		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Akhtar H. Ansari-Ld.DR
Assessee by	:	Shri M. Subramanian-Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	18/09/2019
घोषणा की तारीख / Date of Pronouncement	:	03/10/2019

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeals by revenue for Assessment Years [in short referred to as AY] 2010-11 and 2011-12 contest common order of Ld. Commissioner of Income-Tax (Appeals)-1, Thane, [in short referred to as CIT(A)], Appeal



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Nos. ITA No.542 & 541/2014-15 dated 14/06/2018. The grounds raised in AY 2010-11 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?”¹.
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) has been justified in not appreciating the law correctly that once the purchases are unverifiable / not genuine / bogus, the same should have been 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?.
6. The order of the CIT(A) may be vacated and that of the assessing officer may be restored.”

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

2.1 Facts for AY 2010-11 in brief, are that the assessee being resident individual stated to be engaged as civil contractor under proprietorship concern namely M/s Shah Engineers, was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 11/06/2014 wherein the income of the assessee was determined at Rs.35.97 Lacs, after sole addition of *alleged bogus*



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purchases for Rs.16.99 Lacs as against returned income of Rs.18.97 Lacs e-filed by the assessee on 21/09/2010 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.16.99 Lacs from 5 entities, the details of which have already been extracted in 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 10/05/2013 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, failed to produce any of the supplier to confirm the transactions. Finally, not satisfied with assessee's explanations, Ld.AO disallowed the stated purchases.

2.4 The Ld. CIT(A), after considering assessee's submissions, various judicial pronouncements, material on record and after appreciating the Gross Profit / Net Profit Trends for various years, restricted the additions to 25% of alleged bogus 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. The assessee was in possession of primary purchase documents and the payments to the supplier was through banking channels. However, at the



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same time, the assessee miserably failed to substantiate the purchases during assessment proceedings. The assessee failed to produce any of the suppliers to confirm the transactions and also 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 2011-12 wherein the assessee was saddled with additions of Rs.13.83 Lacs on account of *alleged bogus purchases* in an assessment framed u/s 143(3) r.w.s. 147 on 11/06/2014. 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 2010-11 shall *mutatis mutandis* apply to this year also. Resultantly, the appeal stands dismissed.

5. Both the appeals stand dismissed.

Order pronounced in the open court on 03rd October, 2019.

Sd/-
(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 03/10/2019
Sr.PS:-Jaisy Varghese



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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.**