



ITA No.5100/Mum/2018
Shri Milan Natwarlal Bhayani
Assessment Year 2009-10

आयकर अपीलीय अधिकरण “एक-सदस्य मजलस” 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.5100/Mum/2018
(निर्धारण वर्ष / Assessment Year:2009-10)

Income Tax Officer-Ward-3(3),Kalyan 2 nd Floor, Rani Mansion Murbad Road, Kalyan (W)-421 301.	बनाम/ Vs.	Shri Milan Natwarlal Bhayani 19, Parigandha Apartment Manpada Road. Near Navjivan Hospital Dombivali (E)-421 201.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAWPB 0699 L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	S/Shri Akhtar H. Ansari and Saurabh Kumar-Ld.DRs
Assessee by	:	Shri Devendra Jain-Ld. AR

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

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as AY] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-1, Thane, [in short referred to as CIT(A)], *Appeal No. ITA No.646 & 647/14-15* dated 26/06/2018 on following grounds: -



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- “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 on record would reveal that the assessee being resident individual stated to be engaged in trading of chemicals under proprietorship concern namely M/s Kalapi Chemie Pharma, was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 22/07/2014 wherein the income of the assessee was determined at Rs.12.26 Lacs, after sole addition of *alleged bogus purchases* for Rs.8.40 Lacs as against returned income of Rs.3.86 Lacs filed by the assessee on 23/09/2009 which was processed u/s.143(1).



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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.8.40 Lacs from 2 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 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 confirm the transactions, remained un-responded to and the assessee failed to produce any of the supplier to confirm the transactions. Therefore, the books were rejected u/s 145(3) and the stated purchases were added to the income of the assessee.

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.

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 same time, the assessee miserably failed to substantiate the purchases



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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. The appeal stands 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

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

1. अपीलार्थी/ The Appellant



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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.