



ITA No.7155/Mum/2017  
M/s. Nitin Rajmal Shah  
Assessment Year-2008-09

**आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, MUMBAI**

श्री शक्तिजीत दे, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।  
**BEFORE SHRI SAKTIJIT DEY, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.7155/Mum/2017  
(निर्धारण वर्ष / Assessment Year:2008-09)

<b>DCIT-Central Circle-1(4)</b> Room No.902, Pratistha Bhavan 9 <sup>th</sup> Floor, Old CGO Bldg. Annex. Mumbai-400 020.	<b>बनाम/</b> Vs.	<b>M/s. Nitin R. Shah</b> C-113, Shyam Kamal Building 27, Tejpal Road, Agarwal Market Vile Parle (E), Mumbai-400 057.
<b>स्थायी लेखा सं./ जी आइ आर सं./ PAN/GIR No. AADPS 5476 M</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Appellant by</b>	:	Ms. Samatha Mullamudi-Ld.Sr.DR
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	None

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	30/09/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	04/10/2019

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member):-**

1. Aforesaid appeal by revenue for Assessment Year [AY] 2008-09 contest the order of Ld. Commissioner of Income-Tax (Appeals)-47, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-47/AP.68/15-16* dated 26/09/2017 on following grounds of appeal:-



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- i. On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in restricting the disallowance of Rs. 1,54,966/- to Rs.1,24,829/- on account of bogus purchase made by the assessee to suppress the GP, on the ground that, after making a comparison of profits declared by other MCGM /BMC contractors and other group concerns of M/s RPS Group a uniform flat rate of 7% has been applied in appellate proceedings which is not based on facts and without ruling out suppression of G.P.?"
- ii. "On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in restricting the addition on GP on account of bogus purchase from 8,69% to uniform rate of 7% on the ground that, after making a comparison of profits declared by other MCGM /BMC contractors and other group concerns of M/s RPS Group a uniform flat rate of 7% has been applied in appellate proceedings which is not based on facts and without ruling out suppression of G.P.?"
- iii. "On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition on account of VAT input credit as the same was not paid, stating that deduction of VAT as per section 43B of the Act is available only on payment basis and the assessee has claimed VAT input credit on the impugned purchase bills and the liability to pay such VAT is of the supplier and not the assessee without considering the fact that since VAT was not paid, input credit for VAT cannot be allowed?"
- iv. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 29,37,557/- on account of "provision towards defect liability" without appreciating the fact that the assessee has debited the amount to P&L account, indicating that the gross contracts amount has been credited to the P&L account and credit for TDS amount on the entire amount including retention money has been claimed?"
- v. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 29,37,557/- on account of "provision towards defect liability" by relying upon several judicial pronouncement without appreciating that the facts of the referred case laws are not identical to that of the instant case?"

None has appeared for assessee. Left with no option, we proceed to dispose-off the appeal after hearing Ld. Departmental Representative and on the basis of material on record. We have considered the arguments made by Ld.DR.

2.1 Facts on record would reveal that the assessee being resident individual stated to be engaged as contractor under proprietorship concern namely M/s Speco Infrastructure, was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 31/03/2015 wherein the income of the assessee was



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determined at Rs.255.43 Lacs after certain additions as against income of Rs.223.80 Lacs assessed u/s 143(3) r.w.s. 153A on 28/09/2011. The case was reopened by issuance of notice u/s 148 dated 17/01/2014 followed by statutory notices u/s 143(2) & 142(1). A survey action was conducted u/s 133A on 26/11/2012 in the case of M/s RPS Infraprojects Private Limited and its group concerns. The assessee's proprietorship concern namely M/s Speco Infrastructure, being part of the group, was also covered under survey operations. It transpired that the group obtained accommodation purchase bills from various entities listed as Hawala dealers on Sales Tax website with a view to inflate the expenses and suppress the profits. The statement u/s 131 was recorded from the key persons including the assessee, the relevant extracts of which have already been reproduced in the quantum assessment order. However, the assessee subsequently retracted the answer given in question no. 5-9 of the statement.

2.2 The learned AO, in the light of findings in survey proceedings, show-caused assessee to justify the genuineness of purchases made from tainted / suspicious parties. The assessee, in defense, submitted that purchases were genuine since material was utilized in contract work and the payment to suppliers was through banking channels. In the alternative, it was submitted that Gross profit on tainted purchase of Rs.17.83 Lacs @8.69% amounting to Rs.1.54 Lacs may be added to the income along with additional disallowance of 4% for VAT element. Concurring with alternative submissions, Ld. AO added an amount of Rs.1.54 Lacs on



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account of Gross profit and another amount of Rs.0.71 Lacs being 4% VAT on tainted purchases.

2.3 The assessee was saddled with another addition of Rs.29.37 Lacs on account of defect liability provisions. It was explained that the assessee was carrying out contract for Municipal Corporation. The contractee would retain certain percentage (usually 5%) towards defect liability on account of defect in contract work. Therefore, the gross amount was credited to Profit & Loss Account and amount retained by contractee on account of defect liability was debited to Profit & Loss Account and reflected as *defect liability payable Account* in the Balance Sheet. The actual expenses incurred, from time to time, on account of defect, was directly debited to the Payable Account instead of debiting the same to Profit & Loss Account. However, disregarding the explanation, the said amount was added to the income of the assessee.

3. The Learned CIT(A), after due consideration of factual matrix as well as assessee's submissions reached a conclusion that only the profit element embedded in the bogus purchases was to be taxed. However, the estimation of 8.69% as made by learned AO was reduced to 7%, being rate uniformly applied by revenue to the group entities. The said working reduced the addition of Rs.1.54 Lacs to Rs.1.24 Lacs. Consequently, additional disallowance on account of VAT element as made by Ld. AO was deleted. The addition of Rs.29.37 Lacs on account of defect liability was deleted in view of the fact that no adverse view was taken in assessee's own case for AY 2007-08 and secondly, the defect liability was neither



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received nor accrued to the assessee and therefore, not taxable in the hands of the assessee. Reliance was placed on the decision of Hon'ble Calcutta High Court rendered in **CIT V/s Simplex Concrete Piles India Pvt. Ltd. 179 ITR 8** as well as the decision of Hon'ble Bombay High Court rendered in **CIT V/s Associated Cables Pvt.Ltd. 286 ITR 596**. Aggrieved as aforesaid, the revenue is under appeal before us.

4. After careful consideration of facts and circumstances, we find that first appellate authority has clinched all the issues in the right perspective. The estimated addition of 7% was uniform rate applied to the group concerns. The addition on account of defect liability was deleted keeping in view the fact that no such additions were made in earlier years. Nothing on record would suggest that the accounting methodology being followed by the assessee, in this regard, was not consistent method of accounting. Therefore, we do not find any infirmity in the impugned order.

5. The appeal stands dismissed.

*Order pronounced in the open court on 04<sup>th</sup> October, 2019.*

**Sd/-**

**(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04/10/2019  
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.**