



ITA No.5397/Mum/2018  
Ramesh Pratapji Purohit  
Assessment Year-2009-10

**आयकर अपीलीय अधिकरण “एक-सदस्य मजमल” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, MUMBAI**

**मजनीय श्री शक्तिजीत दे, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI SAKTIJIT DEY, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपील सं./ I.T.A. No.5397/Mum/2018  
(निर्धारण वर्ष / Assessment Year:2009-10)

<b>Shri Ramesh Pratapji Purohit</b> Gala No.8, Ground Floor Kasturi Complex, Anjur Phata Bhiwandi-421 302.	<b>बनाम/</b> Vs.	<b>ITO-Ward 1(3), Kalyan</b> 1st Floor, Mohan Plaza, Wayale Nagar, Khadakpada Kalyan (West).
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AJEPP-6522-F</b>		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	S/Shri Jayant Bhatt & Sanjiv G. Brahme-Ld. ARs
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Ms.K.Jothilakshmi Nayak- Ld. Sr. DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	09/10/2019
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	09/10/2019

**आदेश / O R D E R**

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

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-2, Pune, [in short referred to as ‘CIT(A)’], *Appeal*



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*No.(New):PN/CIT(A)-2/ITO Wd-1(3)/KYN/169/2017-18* dated 11/05/2018 on following grounds of appeal: -

1. The Commissioner of Income Tax (Appeals) - 1, Pune, had erred in confirming the reopening of the Assessment u/s 148 and rejecting the legal point raised by the Appellant with regard to issuance of notice u/s 148 and reasons for the same.
2. Without prejudice to the above the Commissioner of Income Tax (Appeals) - 2, Pune, has in confirming the order of Income Tax Officer, Ward 1(3), Kalyan on account of addition towards alleged bogus purchases of Rs 7,53,941/- for A.Y. 2009-10 disregarding the various judgments of jurisdictional Tribunal and other high Courts Judgments.

(B) Relief claimed

1. The reopening u/s 148 being bad in law be declared void ab initio.
2. Without prejudice to the above the addition of Rs 7,53,941/- towards alleged Hawala purchase is deleted.

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 packing material under proprietorship concern namely M/s Kheteshwar Pack Plast, was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 03/01/2014 wherein the income of the assessee was determined at Rs.9.24 Lacs, after sole addition of *alleged bogus purchases* for Rs.7.53 Lacs as against returned income of Rs.1.70 Lacs filed by the assessee on 24/09/2009 which was processed u/s.143(1). The assessee reflected GP / NP rate of 5.05% / 2.48% on turnover of Rs.79.47 Lacs.

2.2 Pursuant to receipt of certain information from Sales Tax Department, Govt. of Maharashtra, it transpired that the assessee obtained bogus purchases bills amounting to Rs.7.53 Lacs from 3 suspicious entities, the



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details of which have already been extracted at para 2.1 of the quantum assessment order. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on 21/03/2013 which was followed by statutory notices u/s 143(2) and 142(1) wherein the assessee was directed to substantiate the purchase transactions. The reasons recorded for reopening were duly supplied in due course of proceedings.

2.3 The assessee defended the purchases by furnishing details of suppliers along with TIN Nos. and stated that the payments were made through banking channels against purchase invoices. It was also submitted that books were maintained in computerized system wherein quantitative data was being maintained. In the alternative, the assessee, with a view to avoid protracted litigation and to buy peace of mind, offered to pay tax on the stated purchases. Accordingly, the stated purchases were considered as non-genuine and added to the income of the assessee.

3.1 However, subsequently, the assessee agitated the stated additions before learned first appellate authority by submitting that the whole amount could not be added back to the income of the assessee rather the additions should be restricted to some reasonable estimations as held in various judicial pronouncements.

3.2 The Ld. CIT(A), considering the factual matrix in the light of various judicial pronouncements upheld the stand of Ld. AO. Aggrieved, the assessee is in further appeal before us.

4.1 After careful consideration of orders of lower authorities and after appreciating the arguments advanced by respective representatives, we are



ITA No.5397/Mum/2018  
Ramesh Pratapji Purohit  
Assessment Year-2009-10

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. Undisputedly the assessee was in possession of primary purchase documents and the payments to the suppliers were through banking channels. However, at the same time, the assessee miserably failed to substantiate the delivery of material during assessment as well as appellate proceedings. The assessee failed to produce any of the suppliers to confirm the transactions and the onus casted upon assessee, in this regard, remained undischarged.

4.2 The material placed before us would establish that assessee's books of accounts were subjected to Tax Audit u/s 44AB and no adverse comments have been made by the Auditor as to maintenance of books of accounts. The stock summary has been placed on record. The assessee has made purchases of Rs.67.45 Lacs out of which purchases of Rs.7.53 Lacs are under dispute. The Gross Profit Rate reflected by the assessee during the year under consideration is 5.05%. If the disputed purchases are disallowed in its entirety and added back, the gross profit rate would jump to approx. 14.5% in sharp contrast to GP Rate of 5.13% in AY 2007-08, 9.8% in AY 2008-09, 5.68% in AY 2010-11 & 9.10% in AY 2011-12.

4.3 Therefore, on the facts and circumstances, disallowance of entire purchases, in our opinion, would not be justified rather the additions which could be sustained, would be 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



ITA No.5397/Mum/2018  
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of VAT against such bogus purchases. Keeping in view the assessee's financial indices, we estimate the additions @25% of alleged bogus purchases of Rs.7,53,941/- which would translate into an addition of Rs.1,88,485/- in the hands of the assessee. The balance additions would stand deleted. The grounds, on merits, stands partly allowed.

4.4 The Ld. AR has also contested the validity of reassessment proceeding. However, we do not find any substance in the same since the original return was processed u/s 143(1) and the reopening was sought within a period of 4 years from the end of relevant assessment year. The Learned AO was clinched with tangible material in the shape of specific information from Sales Tax Department which suggested possible escapement of income in the hands of the assessee. Nothing more was required at this stage to reopen the case. Nothing on record would suggest any infirmity in the reassessment proceedings. Thus, legal grounds raised by the assessee stands dismissed.

5. Resultantly, the appeal stands partly allowed in terms of our above order.

*Order pronounced in the open court on 09<sup>th</sup> October, 2019.*

*Sd/-*

*Sd/-*

**(Saktijit Dey)**

**(Manoj Kumar Aggarwal)**

न्यायिक सदस्य / **Judicial Member**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 09/10/2019

Sr.PS:-Jaisy Varghese

**आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant



ITA No.5397/Mum/2018  
Ramesh Pratapji Purohit  
Assessment Year-2009-10

2. प्रत्यर्धी/ 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.