



ITA Nos.5720-21/Mum/2018
Deepak Enterprises
Assessment Years - 2009-10 & 2010-11

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.5720/Mum/2018
(निर्धारण वर्ष / Assessment Year:2009-10)
&
आयकरअपील सं./ I.T.A. No.5721/Mum/2018
(निर्धारण वर्ष / Assessment Year:2010-11)

ITO - Ward 27(1)(4) Room No. 409, 4 th Floor Tower No.6, Vashi Rly. Stn. Complex, Vashi, Navi Mumbai	बनाम/ Vs.	Deepak Enterprises 16, Ganesh Krupa Hingwala Lane, Ghatkopar (E) Mumbai – 400 71
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AADFD-1969-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थीकीओरसे/ Appellant by	:	Shri Sanjay Mehta-Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Ms. Jothilakshmi Nayak- Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	10/10/2019
घोषणाकीतारीख / Date of Pronouncement	:	10/10/2019

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member):-

1. Aforesaid appeals by revenue for Assessment Years [AY] 2009-10 and 2010-11 contest separate orders of Ld. Commissioner of Income-Tax (Appeals)-24, Mumbai [in short referred to as ‘CIT(A)’] both dated



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21/06/2018 on certain common grounds of appeal. Since the issues are identical, the appeals are being disposed-off by way of this consolidated order for the sake of convenience & brevity. The grounds for AY 2009-10 read as under: -

1. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.2,74,221/- made by the Assessing Officer on account of bogus purchases, without appreciating the fact that the assessee had failed to produce bills, vouchers and other documentary evidences in support of his claim and without considering the latest Apex Court decision in the case of N.K.Proteins Ltd. wherein it is held that once it is proved that the purchases are bogus then additions should be made on entire purchases and not on profit element embedded in such purchases.
2. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in estimating the profit from Hawala purchases by disallowing only Rs.1,91,025/- being 12.5% of the bogus purchases as even the basic onus of producing delivery challans, transport bills etc. were not fulfilled by the assessee.

We have heard and considered the arguments advanced by both the representatives and deliberated on judicial pronouncements as cited before us.

2.1 Facts from records of AY 2009-10 would reveal that the assessee being resident firm stated to be engaged in trading of surgical items and chemicals, was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 30/03/2015 wherein the income of the assessee was determined at Rs.6.24 Lacs, after sole addition of *alleged bogus purchases* for Rs.4.65 Lacs as against returned income of Rs.1.58 Lacs e-filed by the assessee on 26/09/2009 which was initially processed u/s.143(1).

2.2 Pursuant to receipt of certain information from Sales Tax Department, Govt. of Maharashtra, it transpired that the assessee obtained bogus



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purchases bills amounting to Rs.15.28 Lacs from 10 entities, the details of which has already been extracted at para 5.1 of the quantum assessment order. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on 31/03/2014 which was followed by statutory notices u/s 143(2) and 142(1) wherein the assessee was directed to substantiate the purchase transactions.

2.3 The assessee defended the purchases by furnishing details of purchases and corresponding sales, however, notices issued u/s 133(6) to all the suppliers remained un-responded to. One entity denied having carried out any transaction with the assessee. The assessee failed to produce any of the parties for confirmation of accounts. The assessee also failed to substantiate the delivery of material. The factual matrix led the Ld. AO to form an opinion that the purchases were not genuine. In the said background, Ld. AO worked out peak credit of Rs.3.92 Lacs in respect to 9 entities and added the same to the income of the assessee whereas full disallowance of Rs.0.72 Lacs was made with respect to purchases made from one entity, who denied having carried out any transaction with the assessee. Thus, total disallowance worked out to be Rs.4.65 Lacs as against disputed purchases of Rs.15.28 Lacs which translated into disallowance of purchases to the extent of 30.43% approx.

3. The learned first appellate authority, *inter-alia*, relying upon the decision of Hon'ble Gujarat High Court rendered in **CIT V/s Simit P.Sheth 356 ITR 451** restricted the additions to 12.5% of disputed purchases as



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against 30.43% estimated by Ld. AO. Aggrieved, the revenue is in further appeal before us.

4. After careful consideration, 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. Undisputedly the assessee was in possession of primary purchase documents and the payments to the suppliers were through banking channels. The sales turnover achieved by the assessee has not been disputed / disturbed by the revenue. 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. Therefore, on the given facts and circumstances, 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 of VAT against such bogus purchases, which learned first appellate authority has rightly done so. Therefore, finding estimation of 12.5% to be quite fair and reasonable, we dismiss the appeal.

5. So far as the decision of Hon'ble Gujarat High Court rendered in **N.K. Industries Ltd. Vs DCIT [72 Taxmann.com 289]** is concerned, we find that the facts of that case has already been distinguished by Hon'ble Bombay High Court in **Pr.CIT Vs. M/s Mohommad Haji Adam & Co. [ITA No.1004 & others of 2016, dated 11/02/2019]** wherein Hon'ble Court has



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approved the estimation, on similar factual matrix, based on Gross Profit Rate. Therefore, concurring with the approach of Ld. CIT(A), we dismiss the appeal.

6. Facts are pari-materia the same in AY 2010-11 wherein the assessee has been saddled with addition of Rs.7.29 Lacs. The learned CIT(A) restricted the same, in similar manner, to 12.5% of disputed purchases. Aggrieved the revenue is in further appeal before us. Facts as well as issue being identical, our observation as well as adjudication as for AY 2009-10 shall mutatis-mutandis apply to this year also. Consequently, the appeal stands dismissed.

7. Both the appeals stand dismissed.

Order pronounced in the open court on 10th October, 2019.

Sd/-
(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

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