



ITA No.5731/Mum/2018
Atul V. Lotia
Assessment Year-2010-11

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

माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ I.T.A. No.5731/Mum/2018
(निर्धारण वर्ष / Assessment Year:2010-11)

I.T.O. Ward 27(1)(2) Tower No. 06, 4 th Floor R.No. 407, Vashi Rly Station Complex, Vashi, Navi Mumbai-400 703.	बनाम/ Vs.	Atul V. Lotia Prop: Atul Steels 5/13, Nandlal Popat Chawl Gandhi Nagar, LBS Marg, Ghatkopar (W), Mumbai-400 086.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAAPL-5329-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri S. Michael Jerald-Ld. DR
प्रत्यर्थीकीओरसे/ Respondent by	:	None

सुनवाईकीतारीख/ Date of Hearing	:	14/11/2019
घोषणाकीतारीख / Date of Pronouncement	:	20/11/2019

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2010-11 contest the order of Ld. Commissioner of Income-Tax (Appeals)-25, Mumbai [in short referred to as ‘CIT(A)’], *Appeal No.CIT(A)-*



25/IT-807/2015-16/195 dated 05/07/2018 qua deletion of certain additions on account of alleged bogus purchases.

2. None has appeared for assessee and no valid adjournment application is on record. Left with no option, we proceed to dispose-off the appeal after hearing learned Departmental Representative who supported the additions made by Ld.AO.

3.1 Facts on record would reveal that the assessee being resident individual stated to be engaged in business under proprietorship concern namely M/s Atul Steels was assessed for year under consideration u/s 143(3) r.w.s. 147 on 12/02/2016 wherein the returned loss of Rs.33.42 Lacs filed by the assessee on 11/10/2010 was reduced to Rs.24.39 Lacs on account of addition of Rs.9.01 Lacs on account of alleged bogus purchases.

3.2 Pursuant to receipt of certain information from the DGIT (Inv.) wing, Mumbai/Sales Tax Department, Govt. of Maharashtra, it transpired that the assessee stood beneficiary of accommodation purchases bills aggregating to Rs.9.01 Lacs stated to be obtained from three entities, the details of which have already been extracted in para-2 of quantum assessment order. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on 30/01/2015 which was followed by statutory notices u/s 142(1) wherein the assessee was directed to substantiate the stated purchase transactions by filing requisite details. Although the assessee defended the purchases, however, notices issued u/s 133(6) to confirm the transactions remained unserved and the assessee failed to produce any of the suppliers to confirm the transactions. Resultantly, the



stated purchases were disallowed and added to the income of the assessee.

4. Aggrieved, the assessee contested the stand of the Ld. Assessing Officer before learned first appellate authority vide impugned order dated 05/07/2018 on legal grounds as well as on merits. The legal ground raised by the assessee did not find favor with Ld. CIT(A). However, on merits, Ld. CIT(A) held that the correct approach would be to estimate the additional benefit or profit earned on those purchases and not to disallow the entire purchases. Therefore, *inter-alia*, relying upon the decision of Hon'ble Gujarat High Court rendered in **CIT V/s Bholanath Poly Fab Pvt Ltd. 355 ITR 290** and **CIT V/s Simit P. Sheth 356 ITR 451**, the impugned additions were restricted to 12.5% of alleged bogus purchases. Aggrieved, the revenue is in further appeal before us. It appears that the assessee has not preferred any further appeal.

5. 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 by the revenue. However, at the same time, the assessee miserably failed to substantiate the purchases and could not produce any of the suppliers to confirm the transactions and therefore, the onus casted upon assessee, in this regard, remained undischarged. Therefore, on the given facts and circumstances, disallowance of entire



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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 of VAT against such bogus purchases, which learned first appellate authority has rightly done so. Therefore, finding the estimation of 12.5% to be quite fair and reasonable, we dismiss the appeal.

6. Resultantly, the appeal stands dismissed.

Order pronounced in the open court on 20th November, 2019

Sd/-

(C.N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 20/11/2019
Sr.PS:- **PP,SPS

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



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Sr. No.	Details	Date	Initials	Designation
1	Draft dictation sheets are attached/Part dictation copy encl./order final by Hon.AM		P.P	Sr.PS/PS
2	Draft dictated on	Not Applicable		Sr.PS/PS
3	Draft Placed before author		P.P	Sr.PS/PS
4	Draft proposed & placed before the Second Member			JM/AM
5	Draft discussed/approved by Second Member			JM/AM
6	Approved Draft comes to the Sr.PS/PS	20-11-19	P.P	Sr.PS/PS
7	Order pronouncement on	20-11-19	P.P	Sr.PS/PS
8	File sent to the Bench Clerk	20-11-19	P.P	Sr.PS/PS
9	Date on which the file goes to the Head clerk			
10	Date on which file goes to the AR			
11	Date of Dispatch of order			