



ITA No.5579/Mum/2018 &  
C.O No. 241/Mum/2019  
Daniel Joseph Britto  
Assessment Year-2009-10

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

**माजनीय 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.5579/Mum/2018  
(निर्धारण वर्ष / Assessment Year:2009-10)

<b>D.C.I.T, Circle-1</b> R.No.. 22, B-Wing, 6 <sup>th</sup> Floor Ashar I.T Park, Road No. 16 Z Wagle Ind. Estate, Thane- 400604.	<b>बनाम/</b> Vs.	<b>Daniel Joseph Britto</b> Flat No. 1003, Bldg No. 5, Wimbledon Park, Pokhran Road No. 1 Thane (W), Mumbai-400601.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ACUPB-2574-L</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

&

C.O No. 241/Mum/2019  
(arising out of ITA No. 5579/Mum/2018)

<b>Daniel Joseph Britto</b> Flat No. 1003, Bldg No. 5, Wimbledon Park, Pokhran Road No. 1 Thane (W), Mumbai-400601.	<b>बनाम/</b> Vs.	<b>D.C.I.T, Circle-1</b> R.No.. 22, B-Wing, 6 <sup>th</sup> Floor Ashar I.T Park, Road No. 16 Z Wagle Ind. Estate, Thane- 400604
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ACUPB-2574-L</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Appellant by</b>	:	Shri Akhtar H.Ansari-Ld. DR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri Dinesh R.Shah-Ld. AR

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



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## 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'] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-1, Mumbai [in short referred to as 'CIT(A)'], *Appeal No.771/2014-15 dated 06/07/2018 qua* certain relief provided to the assessee on account of alleged bogus purchases. The assessee has also filed cross-objections against the same and plead for further relief in the matter. The registry has noted a delay of 48 days in assessee's cross-objections, the condonation of which has been sought by the assessee vide petition dated 18/10/2019 which is supported by an affidavit of the assessee. The delay has been attributed to lapse on the part of assessee's concerned Chartered Accountant. Keeping in view the quantum of delay and in the interest of justice, we condone the delay and proceed with the matter as argued before us.

2.1 Facts on record would reveal that the assessee being resident individual stated to be engaged in manufacturing of engineering goods and carrying out job work under proprietorship concern namely M/s Efforts Combine was assessed for year under consideration u/s. 143(3) r.w.s. 147 on 31/10/2014 wherein the income of the assessee was determined at Rs.44.54 Lacs, after sole addition of *alleged bogus purchases* for Rs.10.43 Lacs as against returned income of Rs.34.11 Lacs filed by the assessee on 27/06/2013.



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2.2 Pursuant to receipt of certain information from Sales Tax Department, Govt. of Maharashtra, it transpired that the assessee procured accommodation purchase bills aggregating to Rs.10.43 Lacs from 3 entities, the details of which have already been extracted at para-8 of the quantum assessment order. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on 27/05/2013 which was followed by statutory notices u/s 143(2) & 142(1) wherein the assessee was directed to substantiate the stated transactions. Although the assessee defended the purchases by submitting ledger extracts and bank statements etc., however, notices issued u/s 133(6) to all the suppliers, to confirm the transactions remained unserved. Accordingly, the stated purchases were disallowed and added to the income of the assessee.

3. Aggrieved, the assessee contested the stand of Ld. Assessing Officer before learned first appellate authority wherein the assessee was again directed to substantiate the stated transactions. However, the assessee could not file complete details and also could not produce any of the suppliers to confirm the transactions. Relying upon ratio of various judicial pronouncements and after analyzing the trends of Gross Profit / Net Profit rate reflected by the assessee in previous as well as in subsequent years, the Ld. CIT(A) restricted the impugned additions to 25% of alleged bogus purchases. Aggrieved, the revenue is under further appeal before us against which the assessee has filed the cross-objections.



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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 by the revenue. However, at the same time, the assessee miserably failed to substantiate the purchases and could not produce the supplier to confirm the transactions and therefore, the onus casted upon assessee, in this regard, remained undischarged. Hence, 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. However, finding the estimation to be on the higher side, we restrict the same to 12.5% of alleged bogus purchases. The impugned order stand modified to that extent. The appeal filed by the revenue stand dismissed whereas the ground raised in cross-objections stand partly allowed.

5. In cross-objection, the assessee has pleaded that the revenue's appeal should be dismissed on the basis of low tax effect circular issued by CBDT. However, we find that the case was reopened upon receipt of information from external agency viz. Sales Tax Department, Maharashtra



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and therefore, the factual matrix was covered by one of the exceptions provided in the said circular and the assessee could not be granted the benefit of said circular.

6. Resultantly, the revenue's appeal stands dismissed whereas the cross-objections stands partly allowed.

*Order pronounced in the open court on 20<sup>th</sup> November, 2019*

Sd/-

**(C.N. Prasad)**

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 20/11/2019

Sr.PS:- \*\*PP, SPS

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.**