



ITA No.6178/Mum/2018  
Vijay H. Gandhi  
Assessment Year-2009-10

**आयकर अपीलीय अधिकरण “एक-सदस्य मजमल” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” 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.6178/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>I.T.O Ward 27(3)(5)</b> Room No. 428, 4 <sup>th</sup> Floor, Tower No. 6, Vashi Rly Station Complex, Vashi Navi Mumbai-400 703	<b>बनाम/</b> Vs.	<b>Vijay H. Gandhi</b> Mani Niwas, Mahul Village Opp. Hanuman Temple Chembur, Mumbai-400 074.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AADPG-3327-P</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>	:	None

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	14/11/2019
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	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’] 2009-10 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-515/2015-16/234 dated 02/08/2018* on following grounds of appeal: -



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(i) Whether on the facts & the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.51,677/- and Rs.1,30,332/- made by the Assessing Officer on account of bogus purchases and on account of cash payment u/ s. 69C, 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 addition should be made on entire purchases and not on profit element embedded in such purchases?

(ii) Whether 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.2,58,383/- and Rs.28,618/- being 12.5% of the bogus purchases as even the basic onus of producing delivery challans, transportation details etc. were not fulfilled by the assessee?

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 as building material supplier was assessed for year under consideration u/s 143(3) r.w.s. 147 on 03/03/2015 wherein the income of the assessee was determined at Rs.8.23 Lacs after certain additions on account of alleged bogus purchases as against returned income of Rs.3.64 Lacs filed by the assessee on 29/09/2009 which was processed u/s 143(1).

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.22.15 Lacs stated to be obtained from an entity namely M/s Sam



Enterprises. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on 24/03/2014 which was followed by statutory notices u/s 143(2) & 142(1) wherein the assessee was directed to substantiate the stated purchase transactions by filing requisite details. Although the assessee defended the purchases, however, notice issued u/s 133(6) to confirm the transactions remained unserved and the assessee failed to produce the state supplier to confirm the transactions. Resultantly, the stated purchases were treated as unverifiable. Accordingly, the assessee was saddled with addition of Rs.1.48 Lacs u/s 69C, being cash paid to the stated party and another addition of Rs.3.10 Lacs, being 15% of cheque payment of Rs.20.66 Lacs paid to the stated party. In effect, the assessee was saddled with effective disallowance of approx. 21% against these purchases.

4. Aggrieved, the assessee contested the stand of the Ld. Assessing Officer before learned first appellate authority vide impugned order dated 05/07/2018 wherein Ld. CIT(A), 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**, restricted the impugned additions to 12.5% of alleged bogus purchases and deleted the balance additions. 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



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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. 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 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 20<sup>th</sup> November, 2019*

Sd/-

Sd/-

**(C.N. Prasad)**

**(Manoj Kumar Aggarwal)**

न्यायिक सदस्य / **Judicial Member**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 20/11/2019

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



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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**

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**उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**