

**आयकरअपीलीयअधिकरण “SMC” न्यायपीठमुंबईमें।**

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

**श्रीमहावीरसिंह, न्यायिकसदस्य एवं श्रीजी. मंजुनाथलेखासदस्यकेसमक्ष।**

**BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM**

**आयकर अपील सं./ ITA No. 5510/MUM/2018**

**(निर्धारण वर्ष / Assessment Year:2011-12)**

Late Nirmala Mevalal Verma Through legal heir Rameshchandra M. Verma, Room no. 19, Mishra Chawl, Kajupada, Pipe Line, Jarimari, Kurla, Mumbai 400072	vs.	Income Tax Officer, Ward-21(3)(4), Mumbai (Respondent)
<b>अपीलार्थी / Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>
<b>स्थायीलेखासं./PAN No. AAAPV5903B</b>		

अपीलार्थीकीओरसे/ Appellant by	:	Shri Sameer G. Dalal, AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Akhtar H. Ansari, DR

सुनवाईकीतारीख/ Date of hearing:	16-10-2019
घोषणाकीतारीख/ Date of pronouncement :	16-10-2019

**आदेश/ ORDER**

**महावीरसिंह, न्यायिकसदस्य/**  
**PER MAHAVIR SINGH, JM:**

This appeal is filed by the assessee against the order of CIT(A)-38, Mumbai dated 14.06.2018 for assessment year 2011-12 which in turn has arisen from order of Assessing Officer passed under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act') dated 10.03.2014.



2. The only issue on merits, in this appeal of assessee is against the order of CIT(A) confirming the action of the AO by treating the whole amount as bogus purchases.

3. Briefly stated facts are that the assessee is engaged in the business of manufacturing of plastic moulded items. The AO received information from DGIT (Investigation), who in turn received information from Sales Tax Department, Mumbai that the assessee has made purchases from hawala parties, as listed in hawala dealers by the Maharashtra Sales Tax Department who are providing bogus bills of purchase amounting to Rs.12,16,951/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

S.No.	Name of the seller	Amount
1.	J.B. Traders	10,30,313/-
2.	Amrish Traders	1,86,638/-
	Total	12,16,951/-

4. The AO issued noticed under section 133(6) to the parties which returned back with the remark as “left” and assessee failed to produce these parties. According to information received the name of this party was appearing in the list of hawala entry operators as supplied by sales Tax Department of Maharashtra. The hawala traders admitting before the sales tax authorities in their deposition that they were providing only accommodation purchase bills on commission basis without being actual purchase/ sale of goods. The AO during the course of scrutiny assessment proceedings required the assessee to file the details of purchase. The assessee filed copies of purchase



bills from the above said parties, copies of ledger extract and copies of bank statements to prove the payments by cheque. The AO required the assessee to produce these parties for verification but assessee expressed his inability to do so. According to the AO, the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of whole amount as unproved purchase at Rs.12,16,951/- to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who confirmed the addition made by the AO by observing in para 9.3.6 as under: -

*"9.3.6 The assessee failed to produce the suppliers and the documentary evidences produced not establish genuineness of the alleged purchases claimed to have made from the alleged suppliers. From the assessment order can be seen that the appellant has been granted sufficient opportunities on more than five occasions to produce and submit documentary evidences relied upon by the appellant. The Assessing Officer has issued show cause notice on more than three occasions before concluding the assessment proceedings. This is evident from the fact that the appellant furnished written submissions four times vide letters dated 10.01.2014, 20.01.2014, 25.02.2014 and 07.03.2014*



*during the assessment proceeding after taking adjournment twice each time of three weeks. The appellant was provided the statements recorded of the aforesaid key persons of the alleged concerns along with the reasons recorded for reopening the assessment u/s 147. Despite granting enough opportunities to prove contrary to the suppliers' deposition before the Sales Tax Authorities, the appellant has not discharged the onus of providing the genuineness of the alleged purchases. It is a settled law that onus lies on the assessee to prove the genuineness of any expenditure which is claimed as deduction in computing taxable income and that onus to prove the genuineness of purchase of materials made from the two parties which has been alleged as bogus by the Sales Tax Authorities and confirmed by the facts stated above has not been discharged by the appellant. It is essential for the assessee to discharge the burden of evidencing genuineness of the alleged purchases with very strong and clinching evidence, given the fact that the said parties have out rightly admitted before the Investigating Authorities of having indulged in providing bogus bills to the purchasers which*



*includes the appellant for enabling accommodation entries in the books of the appellant for the commission the alleged parties get in return from the appellant but that has not been done. Taking into consideration the above facts and circumstances of the instant case, I concur with the view of the AO that the appellant has invariably failed to rebut the allegations that purchases that claimed to have made from the said parties, M/s Amrish Traders amounting to Rs. 1,86,313/- and M/s J.B Traders Rs. 10,30,313/- in total amounting to Rs. 12,16,951/- are not genuine and therefore I hold the alleged purchases as bogus and as never have been purchased and confirm the addition of Rs. 12,16,951/- to the total income of the appellant. This ground of appeal is dismissed."*

5. We have considered the issue and gone through the facts and circumstances of the case. We find from the facts of the case and argument of both the sides, that the CIT(A) has confirmed the addition by applying whole amount as bogus purchases. We noted from the facts of the case that the AO has not doubted the sales made by assessee out of these purchases alleged to be bogus. Further, we also noted that the assessee has maintained stock

register payments are through banking channels either on purchases or on sales made. Only deficiency on the part of the assessee is that the assessee has not maintained any transportation receipts or vehement slips for verification of the AO. Even, the parties were not produced in response to notices issued u/s 133(6) of the Act. Hence, we are of the view that only alternative left is that a reasonable profit can be estimated in view of the decision of Hon'ble Gujarat High court in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj). Hence, we direct the AO to recompute the income after applying profit rate at the rate of 12.5% and compute the income accordingly. This issue of assessee's appeal is partly allowed.

6. The next issue in this appeal of assessee is against the order of the CIT(A) confirming the action of the AO in upholding the disallowance of commission of Rs. 3,13,390/- out of total commission of Rs. 4,93,390/-.

7. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has paid commission to M/s Amrita Enterprises of Rs. 1,83,090/- and Indian Commercial Company Ltd. amounting to Rs. 3,10,300/-. The assessee before CIT(A) filed additional evidences and additional evidences were referred to AO. The AO in his remand report has not considered these evidences but simply repeated the observations made in the assessment order. The CIT(A) after going through the additional evidences deleted the addition of Rs. 1,80,000/- but



confirmed the addition of 3,13,390/- mainly in respect to the payment made to both the parties.

8. Before us, both the parties i.e. Revenue and the assessee conceded that the matter can be remanded back to the file of the AO for fresh verification of additional evidences. Accordingly, we set aside the issue and remand the matter back to the file of the AO.

9. **In the result, the appeal of assessee is partly allowed.**

Order pronounced in the open court on 16<sup>th</sup> October, 2019.

Sd/-

(जी. मंजुनाथ /G MANJUNATHA)

(लेखासदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीरसिंह /MAHAVIR SINGH)

(न्यायिकसदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated:16-10-2019.

सुदीप सरकार, व. निजी सचिव / Sudip Sarkar, Sr.PS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापितप्रति //True Copy//

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