

आयकरअपीलीयअधिकरण“SMC” न्यायपीठमुंबईमें।

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

श्रीमहावीरसिंह, न्यायिकसदस्यएवंश्रीजी. मंजुनाथलेखासदस्यकेसमक्ष।

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

आयकर अपील सं./ ITA No. 5491/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

ITO-24(3)(3), Mumbai.	vs.	Shri Prashant Umesh Kalbaug 1/B, Dasmesh Colony, Four Bungalows, Andheri (W), Mumbai 400 058.
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायीलेखासं./PAN No. ACYPK5369E		

अपीलार्थी की ओर से/ Appellant by	:	Shri Akhtar H. Ansari
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Keshav B. Bhujle

सुनवाई की तारीख/ Date of hearing:	16-10-2019
घोषणा की तारीख/ Date of pronouncement :	16-10-2019

आदेश/ ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

This appeal is filed by the Revenue against the order of CIT(A)-36, Mumbai dated 27.04.2018 for assessment year 2009-10 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 12.11.2014.

2. The only issue on merits, in this appeal of Revenue is against the order of CIT(A) restricting the addition of the AO in estimating the profit rate at 12.5% of the bogus purchases.

3. Briefly stated facts are that the assessee engaged in the business of manufacturing of award trophies, gift articles and novelties. 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. 15,29,269/- 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.	Omkar Trading Co	3,54,287
2.	Starwood Mercantile Company P Ltd	1,36,675/-
3.	Kalyan Kirti International	2,97,024/-
4.	Sun Enterprises	7,66,35/-
5.	MR Corporation	1,06,515/-
6.	UV Distributors P Ltd	1,54,080/-
7.	Akashila Trade Ltd	1,70,857/-
8.	Praky Marcantile P Ltd	2,33,196/-
	Total	15,29,269/-

4. 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 profit rate @ 25% of unproved purchase at Rs.3,82,317/- to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who sustained the disallowance at 12.5% of the bogus purchases by observing in para 4.2.6 & 4.2.7 and by following the decision of Hon'ble Gujarat High court in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj) by observing as under: -

"4.2.6 Thus, a study of different cases, wherein addition on account of bogus purchases has been dealt with by various Courts and Tribunals shows that such additions have been upheld in their entirety only in a few cases including decisions rendered in the cases of La Medica, Sri Ganesh Rice Mills, Vicky Foods (P.) Ltd. etc. where apart from various other factors there was lack of reliable record with reference to quantitative details etc. and where evidence produced for payment was found lacking In other cases, where the full quantitative details are not available or details produced were not fully reliable inasmuch as consumption of material was shown but yield was too low and

payments were also doubtful (including the cases of Vijay Proteins Ltd., Bholanath Poly Fab Pvt. Ltd., Simit P Sheth, Sanket Steel Traders, Sathyanarayan P. Rathietc.) addition was upheld in the range of 25% (as in Vijay Proteins case) to 12.5 % to augment the possible suppression in GP applying real income theory depending on the facts of the case. However, perusal of decisions of Tribunals and High Courts on this issue shows that all such cases are decided on the basis of facts and involve no uniform question of law. From the above decisions, the ground-rule that emerges is that where suppliers are not available, the presence of reasonable quantitative details and payments by account payee cheques are primary tests on when the genuineness of purchases is required to be tested. In addition, from cases like Nikunj Eximp Enterprise: (P) Ltd (High Cozen as well as ITAT) M K. Brothers, Nangalia Fabrics Pvt. Ltd. Rajiv G. Kalathil, Permanand Sagar Bose. Diagnostics etc. it emerges that other aspects such as statements of hawala providers recorded by Sales Tax Authorities; affidavits filed by such suppliers before Sales Tax Authorities: absence of evidence in

support of transportation/delivery of material etc., have been held less relevant as mere indicators and not decisive factors, to draw a conclusion regarding genuineness of purchases. Thus, in essence, the benefit derived by the assessee by showing purchases from such bogus parties is the lowering of GP that would have been earned by the assessee had such purchases and corresponding sales been removed from the accounts. In other words, the effective lowering of the GP is the real additional income of the assessee by showing such purchases and only such component would therefore be taxable.

4.2.7. Keeping in mind the totality of the facts and circumstances and the guidelines laid down in judicial decisions discussed above, it would be adequate to meet the ends of justice. if the disallowance is to be restricted to 12.5 percent of the bogus purchases of Rs. 15,29,269/- which amounts to Rs. 1,91,159/-. The AO is therefore, directed to restrict the disallowance as above.

AO is -directed to give appeal effect keeping in mind appellant's objection after examination



of record and law. The grounds of appeal are treated as disposed."

5. We have considered the issue and gone through the facts and circumstances of the case. We find that the CIT(A) has rightly applied the profit rate at the rate of 12.5% for the reason that the sales are not doubted by the revenue. Further even the assessee has paid VAT on these sales made out of these purchases. Hence, we confirm the same. This issue of Revenue's appeal is dismissed.

6. **In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open court on 16thOctober, 2019.

Sd/-

(जी. मंजुनाथ /G MANJUNATHA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ 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