

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री वसीम अहमद, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI WASEEM AHMED, AM

आयकर अपील सं./ ITA No. 4198/Mum/2018

(निर्धारण वर्ष / Assessment Year 2013-14)

The Income Tax Officer Ward-21(1)(5) Room No.120, 1 st Floor, Piramal Chambers, Parel, Mumbai-400 012	बनाम/ Vs.	Shri Isaac Anthony Mendonca Room No.603, 6 th floor, Standard Mill Workers Building, Opp. Maratha Udyog Bhavan, Next to Siddhi Prabha, New Prabhadevi, Mumbai-400 025
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AHQPM7709M		

आयकर अपील सं./ ITA No. 1695/Mum/2019

(निर्धारण वर्ष / Assessment Year 2013-14)

Shri Isaac Anthony Mendonca Room No.603, 6 th floor, Standard Mill Workers Building, Opp. Maratha Udyog Bhavan, Next to Siddhi Prabha, New Prabhadevi, Mumbai-400 025	बनाम/ Vs.	The Income Tax Officer Ward-21(1)(5) Room No.120, 1 st Floor, Piramal Chambers, Parel, Mumbai-400 012
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Kumar Padampani Bora, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Abhishek Jhunjunwala, AR

सुनवाई की तारीख / Date of hearing:	14.11.2019
घोषणा की तारीख / Date of pronouncement:	29.11.2019



आदेश / ORDER

PER Bench:

These cross appeals are arising out of order of the Commissioner of Income Tax (Appeals)-32, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-32/IT-231/ITO 21(1)(5)/2016-17 vide dated 26.03.2018. The Assessment was framed by the Income Tax Officer, Ward-21(1)(5), Mumbai (in short ITO/ AO) for the A.Y. 2013-14 vide order dated 21.03.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in theses appeals of Revenue in ITA No.4198/Mum/2018 and of assessee's appeal in ITA No.1695/Mum/2019 is against the order of CIT(A) directing the AO to restrict the addition by estimating profit percentage at the rate of 6% on bogus purchases.

3. Briefly stated facts are that the assessee engaged in the business of trading in imitation diamond jewellery and related goods. 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 ₹2,05,44,220/- as admitted by these hawala dealers in their deposition before the authorities.



4. The AO issued noticed under section 133(6) to the eight parties which returned back with the remark as "left" except one M/s Bharat Corporation stated that they have not done any transactions with assessee and assessee failed to produce these parties. During the course of assessment proceedings and during appellate proceedings, the assessee submitted all the documentary evidences such as inward register, stock register, payment received against such sales, receipt of material purchases, account payee cheque. According to the AO, the assessee failed to establish the genuineness of the purchase for the reasons that the assessee is not maintain stock register and not keeping stock register and there no proof of transportation of goods. Accordingly, he made addition of whole amount as unproved purchase at ₹2,05,44,220/- to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restrict the disallowance at the rate of 6% of the bogus purchases by observing in Para 5 as under: -

"5.

Thus, respectfully following the judicial decisions cited supra, I hold that the disallowance of entire disputed purchase cannot be sustained and only the income on disputed purchase could be sustained. Accordingly, it is considered

appropriate to estimate the profit embedded in such purchases. As regards estimation of profits, Ld. AR relied on CBDT instruction no 2 of 2008 dated 22/02/2008 wherein the procedure of benign assessment of diamond manufacturing and trading business is prescribed. The CBDT had considered the profit @6% in diamond business as reasonable. Accordingly, it would be fair and reasonable to estimate the profit on disputed purchase @6% that would take care of leakage of the revenue. Accordingly, I direct AO to sustain the disallowance of purchase @6% of disputed purchase of ₹2,05,44,220/- at ₹12,32,653/- and delete the balance disallowance of purchase made in assessment order. Accordingly, Ground No.2 to 4 are partly allowed."

Now, Revenue as well as assessee both are in appeal before Tribunal.



5. We have considered the issue and gone through the facts and circumstances of the case. We noted that the CIT(A) has gone through the facts that once the AO has not doubted the sales made out of the bogus purchases, there is no other alternative except to estimate the profit and hence the CIT(A) has estimated the profit at the rate of 6%. We find that the CIT(A) has rightly applied the profit rate at the rate of 6% of the bogus purchase and we confirm the same. This common issue of both the appeals is dismissed.

6. In the result, both, the appeals of the assessee and Revenue are dismissed.

Order pronounced in the open court on 29.11.2019

Sd/-

(वसीम अहमद / WASEEM AHMED)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 29.11.2019

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

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

आदेश की प्रतिलिपि अग्रेषित/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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai