

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. 4345/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

Indocen Electronic System Private Limited 403-409, A Wing, Great Eastern Summit A, Plot No.56, Sector-15, CBD Belapur, Navi Mumbai-400 614	बनाम/ Vs.	The Asst. Commissioner of Income Tax-15(2)(2), Room No.357, 3 rd Floor, Aayakar Bhavan, M.K. road, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAACI13124N		

आयकर अपील सं./ ITA No. 5845/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

The Asst. Commissioner of Income Tax-15(2)(2), Room No.357, 3 rd Floor, Aayakar Bhavan, M.K. road, Mumbai-400 020	बनाम/ Vs.	Indocen Electronic System Private Limited 403-409, A Wing, Great Eastern Summit A, Plot No.56, Sector-15, CBD Belapur, Navi Mumbai-400 614
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Ashok Puri, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Padampani Bora, DR

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



आदेश / ORDER

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

These cross appeals are arising out of order of the Commissioner of Income Tax (Appeals)]-24, Mumbai [in short CIT(A)], in Appeal Nos. CIT(A)-24/ITO-15(2)(2)/IT-201/2016-17 vide dated 02.04.2018. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle-15(2)(2), Mumbai (in short ACIT/ AO) for the A.Y. 2009-10 vide order dated 16.12.2011 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first common issue in these appeals of Revenue in ITA No. 5845/Mum/2018 and of assessee in ITA No. in ITA No. 4345/Mum/2018 is against the order of CIT(A) directing the AO to restrict the addition by estimating profit at the rate of 12.5% on bogus purchases.

3. Briefly stated facts are that the assessee engaged in the business of repairs of PCB and Hi-Tech electronic and communication equipment. 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. 21,51,586/- as admitted by these hawala dealers in their deposition before the authorities.

4. 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 amount as unproved purchase at Rs. 18,28,849/- being 85% of the bogus purchases as profit to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restrict the disallowance to the extent of 12.5% amounting to ₹2,68,948/- (the CIT(A) has wrongly mentioned the figure at ₹90,598/-, which seems to be a clerical mistake, but later, the mistake has been rectified vide order dated 12.06.2018 under section 154 of the Act) of the bogus purchases by observing in Para 2.4.1.1 by following the decision in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj) by observing as under: -

"....."



I am of the opinion that the facts and circumstances of the case are more akin to the case decided by the Hon'ble Gujarat High court in the case of Smit P Seth (Supra). Therefore, I hereby confirm the disallowance to the extent of 12.5% amounting to ₹ 90,598/- of the socalled bogus purchases made by the Ld. Assessing Officer. The appellant succeeds partially and gets a relief of ₹6,34,187/-. This ground is 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 12.5%. We find that the CIT(A) has rightly applied the profit rate at the rate of 12.5% of the bogus purchase and we confirm the same. This common issue of both the appeals is dismissed.



6. The next issue assessee's appeal is against the order of CIT(A) is as regards to reopening of assessment. For this assessee's has raised the following ground: -

"1. The assessing officer has erred in law and on facts of the case in not giving his finding on ground No.1 of the appeal regarding bad reopening the assessment."

7. At the outset, the learned Counsel for the assessee fairly agreed that this issue need not be prosecuted and he has not made any argument qua this also. Hence, the issue is dismissed as not pressed.

8. In the result, both, the appeals 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