

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. 6029/Mum/2018

(निर्धारण वर्ष / Assessment Year 2014-15)

Popatlal Nathalal Shah GW-7022, 'G' Tower, Bandra- Kurla Complex, Bandra (E), Mumbai-400 051	बनाम / Vs.	The Asst. Commissioner of Income, 19(2), Income Tax Office, Matrumandir, Tardeo
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAAFP0468K		

अपीलार्थी की ओर से / Appellant by	:	Smt. Arti Vissanji, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Kumar 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:

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-30, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-30/19(2)/10300/2017-18 vide dated 16.08.2018. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle-19(2), Mumbai (in short



ITO/ AO) for the A.Y. 2014-15 vide order dated 29.12.2017 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) directing the AO to restrict the addition by estimating profit percentage at the rate of 3% on bogus purchases.

3. Briefly stated facts are that the assessee is trading in Diamond. 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 ₹9,23,99,829/- 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 as the assessee could not produce the parties for verification in

response to notices issued under section 133(6) of the Act and 131 of the Act. Accordingly, he made addition of whole amount as unproved purchase at ₹9,23,99,829/- to the return income of the assessee.

5. Aggrieved, assessee preferred the appeal before CIT(A), who restrict the disallowance at the rate of 3% of the bogus purchases by observing in Para 6.14 by following the decision in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj) by observing as under: -

"6.14 Thus it is seen that the facts of the instant case are completely different and distinct than the facts of the case relied upon by the AO to estimate the profit margin at 100% of such purchases. While deciding the profit element embedded in the bogus purchase cases, Gujarat High Court adopted the profit @ 12.5% by taking the benefit derived out of the saving of taxes, considering the profit margin in that line of trade. In the light of the above, one has to see in the present case, who are in the manufacturing



and trading of diamonds, the profit element embedded estimation @ 100% is correct or not. Coming to the profit margin in the trade, the taskforce group for diamond industry constituted by the Government of India, Ministry of Commerce and Industry, after considering the BAP scheme, recommended presumptive tax for net profit calculated @2% of trading activity and @3% for manufacturing activity or 02.5% across the board. It is also ascertained that the operating profit in case of diamond trading for computation of ALP by the TP wing is consistently in the region of around 1.75% to 3%/u. It is also brought to my notice that the AOs are also adopting 3% on the purchases made from Shri Bhanwarlal Jain group concerns, as the profit element embedded, in the subsequent assessments finalized on the similar



set of facts. In view of the same and also since the profit margin is lesser in this sector, adopting 100% by the AD, is not based on correct footing. Considering the lesser profit margin in this sector i.e. around 2 to 3 percent and the taxes saved is around 1% and also on purchases made from places like Surat, there is no levy of tax, I am of the considered opinion that if the addition is sustained to the extent of 3% of the purchases made as the profit element embedded in such purchases the same will meet the ends of justice. In appellant's own case for A.Y. 2012-13, Hon'ble ITAT 'F' Bench Mumbai vide order dated 08.11.2017 has restricted the profit margin to 3% of such purchases. Accordingly, respectfully following the decision and in view of above facts of the case, I direct the AD to restrict the addition @3%, on the total purchases of Rs. 9,23,99,829/- as the



profit element embedded in such purchases. Ground No. 1 of the Appeal raised on this issue is treated as Partly Allowed."

Now, aggrieved assessee is in appeal before Tribunal.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the Tribunal in assessee's own case in the preceding year i.e. AY 2012-13 in ITA No. 5939/Mum/2016 order dated 08.11.2017 has already confirmed the profit rate at the rate of 3% by observing in Para 7 as under: -

"7. We have heard the Id. Departmental representative (for short 'D.R'), perused the orders of the lower authorities and the material available on record. We have given a thoughtful consideration to the facts of the case and are of the considered view that the CIT(A) had by way of a very well-reasoned order restricted the addition in the hands of the assessee to the extent of 3% of the aggregate value of the purchases which were claimed by the



assessee to have been made from the aforementioned dummy concerns, viz. (i) Mohit Enterprise; (ii) Mayur Exports; and (iii) Prime Star. We find that it remains as a matter of fact borne from record that the assessee had failed to substantiate the genuineness and veracity of the purchases which were claimed to have been made from the aforementioned bogus suppliers. We further find that the A.O while concluding that the assessee had not made any genuine purchases from the aforementioned parties, had arrived at such a conclusion after taking cognizance of certain material facts, viz. (i) the persons in charge of the aforesaid bogus concerns had in their statements recorded on oath by the investigation wing during the course of the Search and survey action, had admitted that they were only dummies and the concerns were as a matter of fact managed and controlled by Shri. Bhanwarlal Jain and his family members;(ii) the said concerns were only



providing accommodation bills and not carrying on any genuine business transactions; and (ii) assessee had failed to substantiate the genuineness and veracity of the purchases claimed to have been made from the aforesaid parties on the basis of irrefutable documentary evidences. We have given a thoughtful consideration to the facts before us and are of the considered view that the A.O had rightly concluded that the purchases claimed by the assessee to have been made from the aforesaid dummy concerns could safely be characterized as bogus. We are of the considered view that the CIT(A) had rightly appreciated that now when the assessee had absolutely failed to lead any primary evidence to substantiate the genuineness and veracity of the purchases transactions under consideration, therefore, there remained no occasion for the A.O to have held the purchase transactions under consideration as genuine. We are further persuaded to be in agreement with the



CIT(A) that now when the sales of the assessee had not been doubted and dislodged by the A.O, therefore, it could safely be gathered that the assessee had purchased the goods under consideration, though not from the aforementioned dummy concerns from whom bogus bills have been taken, but from certain unidentified parties operating in the open/grey market. We are further of the view that the CIT(A) had rightly appreciated that the addition in the hands of the assessee was liable to be restricted only to the extent of the profit element which was embedded in making of purchases from the open/grey market. We find that the CIT(A) though was not oblivious of the fact that in respect of bogus purchases made in a normal business, the courts had consistently estimated the profit margin involved in making of purchases from the open/grey market @12.5% of the value of the bogus purchases, but then, not loosing sight of

the fact that unlike those cases, in the trade line of diamond business the profit margin did not exceed 3%, had thus in all fairness restricted the addition in the hands of the assessee to 3% of the aggregate value of the bogus purchases which were claimed to have been made from the aforesaid parties. We have given a thoughtful consideration to the facts of the case and are persuaded to be in agreement with the view taken by the CIT(A). We thus being of the considered view that the CIT(A) had fairly concluded that the addition in respect of the purchases which were claimed by the assessee to have been made from the aforementioned bogus concerns, viz. (i) Mohit Enterprise; (ii) Mayur Exports; and (iii) Prime Star, were liable to be restricted to 3% of the aggregate value of the purchases, therefore, find no reason to dislodge his well-reasoned order. We thus, in the backdrop of our aforesaid observations, finding ourselves as being in agreement with the view taken by the



CIT(A), dismiss the appeal of the assessee."

7. Respectfully following the Tribunals' decision in assessee's own case, we dismiss the appeal of the assessee.

8. In the result, the appeal of the assessee is 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