

**आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" 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. 7569/Mum/2016**

(निर्धारण वर्ष / Assessment Year 2009-10)

Supertech Construction Co. 601, Dwarka Apartment, Sheth Bajanlal Marg, Borivali (east), Mumbai-400 066	बनाम / Vs.	The Asst. Commissioner of Income Tax, Circle 32(3), Room No.108, 1 <sup>st</sup> Floor, C-11, BKC, Mumbai-400 050
<b>(अपीलार्थी / Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>
<b>स्थायी लेखा सं./PAN No. ABLFS5099K</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Sashi Tulsian, ARs'
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri Amit Pratap Singh, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	13.11.2019
घोषणा की तारीख / <b>Date of pronouncement:</b>	29.11.2019

**आदेश / O R D E R**

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

This appeal by assessee is arising out of order of the Commissioner of Income Tax (Appeals)-44, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-44/ACIT 32(3)/ITA-89/15-16 vide dated 06.10.2016. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle-32(3), Mumbai (in short ACIT/ AO) for the A.Y. 2009-10 vide order dated 27.02.2015 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee is against the reopening of assessment and for this, assessee has raised the following ground No.1: -

*"1. On the facts and circumstances of the case as well as in law the Learned AO has erred in re-opening the assessment under section 148 of the I.T. Act. Appellant contends that the issuance of notice for reopening of the assessment itself was bad in law and consequently the reassessment order/ passed under section 147/143(3) is liable to be quashed."*

3. The learned Counsel for the assessee has not made any argument on this ground and hence, the same is dismissed as not argued.

4. The second issue on merits is as regards to the rejection of books of account and thereby applying profit rate at the rate of 8.17% on the gross receipts by relying on the decision of settlement commission for AY 2011-12. For this, assessee has raised the following grounds: -

*"2. On the facts and circumstances of the case as well as in Law the Learned A.O has erred in concluding the assessment by rejecting the books of account of the appellant without issuing*



*any show cause or without providing reasonable opportunity of being heard to appellant and reasons assigned by him for doing the same are wrong and insufficient.*

*3. On the facts and circumstances of the case as well as in Law the Learned A.O. has erred in passing assessment for the year by relaying on the Settlement Commission Order for the AY 2010-11 reasons assigned by him for doing the same are wrong and insufficient.*

*Further, on the fact and circumstances of the case as well as in law the (earned A.O. has erred in applying 8.17% on the gross receipt of the Appellant to determine the total income of the appellant for the year in question and he has further arrived this 8.17% on the basis settlement order in the case of the appellant for the AY 2010-2011 as under:*

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A)	Total income Determined by the Hon Settlement Commission for AY 2010-11	67,89,069
B)	Total turnover of the Appellant for the AY 2010-11	8,30,28,539
C)	% of total income to turnover = (A) / (B) * 100	8.17%

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*and simply applied this 8.17% on the gross receipts of the appellant for the year in clues even after understanding the details working of Total income determined by the settlement commission proceeding which was submitted and reproduced in the assessment order by the A.O.*

*4) a) On the facts and circumstances of the case as well as in Law the Learned CIT (A) erred in confirming the addition made by the AO on the ground that appellant is not interested in pursuing the appeal when appellant representative filed request Letter for short adjournment due to the pressure of submitting the Tax audit return.*

*b) While sustaining the addition of Rs.34,83,474/- the Learned CIT (A) failed to appreciate that the AO made the said addition by oversight and mistake and correct working for the year in question according to Settlement commission were reported in the assessment order also and AO has accepted in principle that income for the year will be determined as per*

*settlement commission order and the same thing were noted in Para 5.4 of the Assessment order. however, while passing the order applied the Settlement commission rate for the Year to the receipt which is devoid of any merit, arbitrary, uncalled for and bad in law, the appellant be given such relief or relief's as prayed for."*

5. We have heard the rival contentions and gone through the facts and circumstances of the case. Briefly stated facts are that the assessee is a civil contractor and executed his contract during the year awarded by Municipal Corporation of Greater Mumbai (MCGM) in his capacity of sub-contractor. The Assessing Officer received information from DGIT Investigation, Mumbai that the assessee has obtained bogus bills of purchase from various parties amounting to Rs.1,09,12,729/- and thereby assessment was reopened by notice under section 148 of the Act. We noted that the sales tax department, Mumbai, Government of Maharashtra carried out detailed enquiries in respect of the parties and recorded statements, deposition, affidavit etc. of main persons of these concerns which indicated that these concerns were into providing bogus bills and no actual goods or services were delivered by these parties and only bogus bills were issued after charging small amount of commission. The assessee submitted on its own that the total

purchases from the 10 suspected parties was actually to the tune of ₹1,50,25,860/- as against ₹1,09,12,929/- about which the AO had received the information. In spite of submitting all the evidences regarding the genuineness of the purchases the AO estimated the income of the assessee at 8.17% of the total turnover. The assessee's gross contract receipt was taken at ₹6,50,58,621/- and applied the gross profit rate at the rate of 8.17% on gross receipts and assessed the income at ₹53,15,289/- as against the income declared by the assessee at ₹18,31,815/- thereby differential amount of Rs.34,84,474/- was added to total income of the assessee by observing in Para 5.4 as under: -

*"5.4 The submission of the assessee have been considered at length. In view of the fact that the assessee had gone to the Settlement Commission, Mumbai for the AY 2010-11 & 2011-12 and also taking into consideration the various decisions of settlement commission in the case of contractors, who had procured goods from the bogus hawala parties, I am of the considered opinion that 8.17% of the Gross contract receipt of the assessee should be taken as business income of the assessee as accepted by the settlement commission for AY 2010-11. In view of*

*the above, books of accounts of the assessee are hereby rejected and the gross contract receipts are brought to the tax as under;"*

6. Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the action of the Assessing Officer. We noted that during the course of assessment proceedings, the assessee filed party wise details of purchase along with VAT numbers and as per information provided by the Assessing Officer purchase from the suspicious parties was to the tune of ₹1,09,12,929/-. But we noted that the assessee suo moto informed that the actual purchase from these two parties were amounting to ₹1,50,25,860/-. It was contended by assessee's counsel before us that all the payment made to these parties were by cheque and during the course of assessment following evidences were provided: -

- "a. Copy of bank settlements*
- b. Copy of ledger account of parties along with copies of bills and challans.*
- c. Quantitative details of material purchased.*
- d. Comparative statement showing total raw material required as per*

*standard and actual raw material purchased.*

*e. Working of total requirement of the major material as per standard issued by the MCGM in respect of the various work undertaken by the appellant firm.*

*f. Summary of total activity carried out by the appellant firm on the basis of payment certificate."*

The assessee also filed the following evidences: -

*"a. Purchase bills*

*b. Transportation bills*

*c. Confirmed copy of accounts*

*d. Payment through account payee cheques.*

*e. VAT registration of the sellers and their Income Tax Return."*

7. We noted that the assessee has disclosed profit rate at the rate of 9.61% on the turnover of ₹6,50,58,621/- and there is no dispute whatsoever noted by the Assessing Officer or CIT(A) in their respective orders. The Assessing Officer has already disclosed the gross profit amounting to ₹62,54,161/- but the

purchase from the parties are to the tune of ₹1,50,25,860/- which are included in the total turnover of the assessee. We noted that the assessee itself declared the profit rate at the rate of 9.69% but the purchase made from these suspected parties on which profit accounted for is only to the tune of Rs. 9.69% but in our view the profit rate in the case of bogus purchase or purchase made from suspected parties should have been at the rate of 12.5%. Hence, we direct the Assessing Officer to restrict the addition being differential amount as profit at the rate of 12.5% minus (-) 9.61% on the bogus purchases or purchases from suspected parties amounting to Rs. 1,50,25,860/- only. We also noted that there is no defect in the books of accounts but since, there is element of bogus purchase which we have already considered and no other addition can be made. We direct the Assessing Officer to re-compute the income in view of the above directions. The appeal of the assessee is partly allowed.

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

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