

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

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 473/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Spectra Solutions New Satguru Nanik Industrial Estate Gala No.1, Jay Coach Naka, New Western Express Highway, Goregaon (E), Mumbai- 400053.	बनाम/ Vs.	ITO Ward-22(3)(4) Room No.304, 4 th Floor, Piramal Chamber, Lalbaug, Mumbai-400012.
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आयकर अपील सं/ I.T.A. No. 35/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2009-10)

ITO Ward-22(3)(4) Room No.304, 4 th Floor, Piramal Chamber, Lalbaug, Mumbai-400012.	बनाम/ Vs.	M/s. Spectra Solutions New Satguru Nanik Industrial Estate Gala No.1, Jay Coach Naka, New Western Express Highway, Goregaon (E), Mumbai- 400053.
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स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AANFM8588J

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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Assessee by:	Shri Dinkle Hariya
Revenue by:	Shri V. Vinod Kumar

सुनवाई की तारीख / Date of Hearing: 08/11/2019

घोषणा की तारीख /Date of Pronouncement: 26/11/2019

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee as well as revenue has filed the above mentioned appeals against the order dated 13.10.2017 passed by the Commissioner of



Income Tax (Appeals) -34, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10.

ITA. NO.473/M/2018

2. The assessee has filed the present appeal against the order dated 13.10.2017 passed by the Commissioner of Income Tax (Appeals) -34, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10.

3. The assessee has raised the following grounds: -

“1. REASSESSMENT

1.1 The Learned Commissioner of Income tax (Appeals) 34, Mumbai Ld. CIT (A)"J, erred in confirming the action of the A.O. in initiating reassessment proceedings and framing the assessment of the Appellant by invoking the provisions of section 147 r.w.s. 148 of the Income tax Act, 1961 ["the Act").

1.2 While doing so, the Ld. CIT (A) failed to appreciate that:

(i) The case of the appellant did not fall within the parameters laid down by section 147 r.w.s. 148 of the Act;

(ii) The necessary preconditions for initiating and completion thereof were not satisfied.

1.3 It is submitted that in the facts and the circumstances of the case, and in law, the reassessment framed is bad, illegal and void.

WITHOUT PREJUDICE TO THE ABOVE

2. UNEXPLAINED PURCHASE / BOGUS PURHCASE [RS. 27,14,322/-

2.1 The Ld. CIT (A) erred in confirming the disallowance made by the A.O. on account of the alleged unexplained expenditure / bogus purchase u/s. 69C, to the extent of Rs.27,14,322/-, being approximately 25% of the alleged bogus purchases.

2.2 It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.



2.3 Without prejudice to the above, assuming but not admitting that some disallowance was called for, it is submitted that the computation of the disallowance made by the AO is arbitrary, excessive and not in accordance with law.”

4. The brief facts of the case are that the assessee filed its return of income on 28.09.2009 declaring total income to the tune of Rs.4,56,770/- for the A.Y.2009-10. The return was processed u/s 143(1) of the I.T. Act, 1961. The case of the assessee was reopened u/s 147/148 of the Act. In reply to the notice, the assessee has filed the revised return of income on 17.04.2014 declaring total income to the tune of Rs.3,88,977/-. The case of the assessee was reopened on the basis of information received from the DGIT (Inv.), Mumbai in which it was conveyed that the assessee has taken the bogus purchase entries in sum of Rs.1,09,11,784/- from the following 5 parties.

Name of hawala Party	Name Beneficiary	Amount
Sagar Enterprises	Spectra Solutions	10,86,800
Om Corporation	Spectra Solutions	31,09,496
Tara Enterprises	Spectra Solutions	10,96,368
Real Traders	Spectra Solutions	11,57,520
Siddhivinayak Corporation	Spectra Solutions	44,61,600
Total		1,09,11,784

5. After the reply of the assessee, the AO restricted the addition of the bogus purchase to the tune of Rs.1,08,57,289/- u/s 69C of the Act. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 25% of the total bogus purchase. Feeling aggrieved, the assessee has filed the present appeal before us.

6. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The assessee failed to produce the



sufficient evidence before the AO to prove the purchase as genuine. The assessee also failed to produce the suppliers before the AO. In the instant case, sale is not doubted. It is settled law that when the sales are not doubted then the 100% addition cannot be made and in this regard we also find support of law settled by the Hon'ble Jurisdictional High Court in the case of **Nikunj Eximp Enterprises (in writ petition no.2860 dated 18.06.2014)**. In the present case the facts of the case seems that the assessee has made purchase from the grey market. Making purchases through the grey market gives the assessee savings on account of non-payment of tax of and others at the expenses of the state-exchequer. In view of the said circumstances, no harms seem if the addition be restricted to the extent of 12.5% of the bogus purchase. The Ld. Representative of the assessee has argued that when only the profit earned by assessee on these bogus transactions is to be taxed the gross profit already shown by the assessee and offered to tax should be reduced from the standard 12.5% being directed to be disallowed on account of bogus purchase.

7. Up on careful consideration, we find strength in the submission of the Ld. Representative of the assessee as otherwise it will be double jeopardy to the assessee. Accordingly, we modify the order of the Ld. CIT(A) and direct that the disallowance in this case be restricted to 12.5% of the bogus purchases as reduced by the gross profit rate already declared by the assessee on these transactions. Accordingly, the appeal filed by assessee is hereby partly allowed.

ITA. NO.35/M/2018

8. The facts of the present case are quite similar to the fact of the case as narrated above while deciding the appeal of the assessee



bearing ITA. No.473/M/2018 for the A.Y.2009-10. There is no need to repeat the fact again. The matter of controversy in this appeal is also the same. The revenue filed the appeal to raise the addition more than 12.5% of addition and the assessee filed the appeal challenging the addition which has been restricted to the extent of 12.5% minus gross profit declared by the assessee. The matter of controversy has been decided while deciding the appeal bearing ITA. No.473/M/2018. Accordingly, the finding given in the said appeal is quite applicable to this appeal also as mutatis mutandis. Accordingly, we dismissed the appeal of revenue bearing ITA. No.35/M/2018. In result, appeal filed by the revenue is hereby dismissed

9. In the result, the appeal filed by the revenue is hereby dismissed and appeal filed by the assessee is hereby ordered to be partly allowed.

Order pronounced in the open court on 26/11/2019.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 26/11/2019

Vijay Pal Singh/ Sr. P.S.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA Nos. 35 & 473/M/2018
A.Y. 2009-10

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Sr. Private Secretary)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai