

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.4061/M/2017
Assessment Year: 2011-12**

ACIT, Central Circle-1, Room No.10, A Wing, 6 th Floor, Ashar IT Park, Road No.16-Z, Wagle Industrial Estate, Thane (W)	Vs.	M/s. Sai Mahavir Developers, 66-67 Mahavir Centre, Plot No.77, Sec-17, Vashi, Navi Mumbai – 400 703 PAN: ABIFS4577P
(Appellant)		(Respondent)

**ITA No.4333/M/2017
Assessment Year: 2011-12**

M/s. Sai Mahavir Developers, 66-67 Mahavir Centre, Plot No.77, Sec-17, Vashi, Thane – 400 703 PAN: ABIFS4577P	Vs.	Deputy Commissioner of Income Tax, Central Circle-1, Room No.10, A Wing, 6 th Floor, Ashar IT Park, Road No.16-Z, Wagle Industrial Estate, Thane (W)
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Prateek Jain, C.A
Revenue by : Shri Chaudhary Arunkumar Singh, D.R.

Date of Hearing : 18.07.2019
Date of Pronouncement : 22.08.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The above cross appeals one by the Revenue and the other by the assessee have been preferred against the order dated 27.03.2017 of the Commissioner of Income Tax (Appeals)

[hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

ITA No.4333/M/2017 (Assessee's appeal)

2. At the time of hearing the assessee did not press ground No.1 & 2 and therefore they are dismissed as not pressed.

3. The issue in ground No.3 is against the part confirmation of addition equal to 25% of the bogus purchases by Ld. CIT(A) as against the 100% added by the AO.

4. The facts in brief are that the assessment was framed in this case under section 143(3) read with section 153B(1)(b) of the Act vide order dated 25.03.2013 assessing the income of Rs.6,58,32,890/- by making addition of Rs.95,76,355/- on account of bogus purchases. The AO added the said purchases following an information received from DGIT Investigation Wing, Mumbai that assessee is beneficiary of hawala purchase entries from 3 parties namely M/s. Akshata Enterprises Rs.3,40,220/-, M/s. Praveen Steel Traders Rs.14,66,382/-, M/s. Top Bricks and Sand Suppliers Rs.77,69,753/-. The AO rejected the contentions of the assessee made during the course of assessment proceedings and treated the entire purchases as non genuine on the basis of DGIT information as the assessee could not satisfactorily explained the purchases from these parties.

5. The Ld. CIT(A) partly confirmed the addition at 25% of the total bogus purchases on the basis that assessee has shown overall profits of 25% and accordingly the profit element embedded in the said alleged purchases were directed to be assessed at 25% of such purchases.

6. The Ld. A.R., at the outset, submitted that the case of the assessee is squarely covered by the decision of co-ordinate bench of the Tribunal in the sister concern cases in ITA No.4349/M/2017 A.Y. 2012-13 and 4348/M/2017 A.Y. 2011-12 vide order dated 28.11.2018 wherein under similar facts the addition which was sustained by the Ld. CIT(A) at 25% was reduced to 3%. The Ld. A.R. submitted that the same decision of the co-ordinate bench of the Tribunal may kindly be followed and the addition may kindly be reduced to 3%.

7. The Ld. D.R., on the other hand, relied on the order of the AO by submitting that the assessee was found to be beneficiary of hawala purchase entries which was unearthed during the course of investigation by the Sales Tax Department and found that the suppliers were engaged in providing bogus accommodation entries without supplying any material and therefore the order of AO may kindly be affirmed.

8. After hearing both the parties and perusing the material on record, we observe that the identical issue has been decided by the co-ordinate bench of the Tribunal in assessee's sister concern case in ITA No.4349/M/2017 A.Y. 2012-13 and 4348/M/2017 A.Y. 2011-12 vide order dated 28.11.2018 wherein the addition was reduced to 3% on account of alleged bogus purchases as against the 25% sustained by the Ld. CIT(A). The operative part is reproduced as under:

"7. After hearing both the parties and perusing the material on record, we find that undisputedly the assessee has availed bogus bills in respect of purchases from the said parties to the tune of Rs.28,81,637 for A.Y. 2011-12 and Rs.5,24,948/- for A.Y. 2012-13. We find that the AO has not disputed the consumption of material in the development of property meaning thereby that assessee might have purchased the goods from the grey market and under these circumstances it is only the percentage of the total such purchases has to be brought to tax. The Ld. CIT(A)

sustained the addition at 25% which is quite unreasonable and on the higher side. Moreover, we find from the perusal of the orders of co-ordinate bench of the Tribunal in the case of Adeshwer Enterprise vs. DCIT in ITA No.4335 to 4338/M/2017 A.Y. 2008-09 to 2011-12 and ACIT, Central Circle-1 vs. M/s. Abhinandan Buildtech Pvt. Ltd. vs. DCIT in ITA No.4065, 4066 & 4067/M/2017 A.Y. 2008-09, 2011-12 & 2012-13 that the Tribunal in group concerns restricted the addition to 3% of the total such purchases. We, therefore, respectfully following the said orders of the co-ordinate bench of the Tribunal direct the AO to make the addition at the rate of 3% of such bogus purchases.”

9. Since the facts of the case before us are materially same to the case as decided by the co-ordinate bench of the Tribunal above, we are therefore inclined to set aside the order of Ld. CIT(A) and direct the AO to make the addition @ 3% of the alleged bogus purchases. Appeal of the assessee is partly allowed.

ITA No.4061/M/2017 (Revenue’s appeal)

10. Since we have partly allowed the appeal of the assessee in ITA No.4333/M/2017, the appeal of the Revenue in ITA No.4061/M/2017 becomes infructuous and is dismissed.

11. In the result, the appeal of the assessee is partly allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 22.08.2019.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 22.08.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.