

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, न्यायिक सदस्य

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA Nos. 6942 & 6943/Mum/2018

(निर्धारण वर्ष / Assessment Year 2011-12)

The Income Tax Officer Room No. 401, C-10, Pratykshkar Bhavan, BKC, Bandra (E), Mumbai-400051	बनाम/ Vs.	Salman R. Chhapra 101, 1 st Floor, Ayesha Tower SV Road, Andheri (W), Mumbai-400 102
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AHJPC1214E		

आयकर अपील सं./ ITA Nos. 7514 & 7515/Mum/2018

(निर्धारण वर्ष / Assessment Year 2011-12)

Salman R. Chhapra 101, 1 st Floor, Ayesha Tower SV Road, Andheri (W), Mumbai-400 102	बनाम/ Vs.	The Income Tax Officer Room No.401, C-10, Pratykshkar Bhavan, BKC, Bandra (E), Mumbai-400051
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Akhtar H. Ansari, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Jitendra Singh, AR

सुनवाई की तारीख / Date of hearing:	19.12.2019
घोषणा की तारीख / Date of pronouncement :	19.12.2019

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

These cross appeals are arising out of the orders of Commissioner of Income Tax (Appeals)-37, Mumbai [in short CIT(A)], in Appeal Nos. CIT(A)-37/IT-124,126/ITO-25(1)(1)/2017-18 even dated 09-10-2018. The Assessment was framed by the Income Tax Officer, Ward-25(1)(1), Mumbai (in short ITO / AO) for the A.Y. 2011-12 vide order dated 29.01.2016 under section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act'). The penalty was levied by ITO, ward 25(1)(1) under section 271(1)(c) of the Act vide order dated 28.07.2016.

2. The first issue these cross appeals of Revenue and assessee in ITA No. 6942 & 7514/Mum/2018 is against the order of CIT(A) restricting the addition of profit rate at the rate of 12.5 % as against made by the AO at the rate 25% of the bogus purchase.

3. Briefly stated facts are that the assessee engaged in the business of trading in Timber product. 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 ₹1,04,49,880/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -



"Sl No.	Name of party	Amount
1.	M/s Universal Suppliers	15,87,105
2.	M/s Noble Associates	17,87,153
3.	Mark Enterprises	5,86,203
4.	M/s royal Timber Trading Co.	21,16,800
5.	M/s Woodland Enterprises	31,22,822
	Total	1,04,49,880

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 and accordingly, he made addition of unproved purchases at 25% to ₹1,04,49,880/- to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restricted the disallowance at 12.5% of the bogus purchases by observing in para as under: -

"5.11 Considering the totality of the facts before me, as well as the judicial opinion available, I am inclined to agree with the appellant's stand that the addition is bogus purchases. The total purchased debited to the trading account from these parties are ₹1,04,49,880/-. I am of the view that estimation of profit at 12.5% would meet the ends of justice. Therefore, I direct the AO to estimate profit of 12.5% on the total purchases in question which works out to ₹13,06,235/-

(12.5% of Rs.1,04,49,880/-). The appellant therefore gets relief of ₹13,06,235/- (₹26,12,470/- minus ₹13,06,235/-). The grounds raised are partly allowed."

Both assessee as well as Revenue came in cross appeals before Tribunal against the decision of CIT(A) restricting the addition of profit rate at 12.5% as against applied by AO at 25% of the bogus purchases.

5. I have considered the issue and gone through the facts and circumstances of the case. I noted the facts from the assessment order and also from CIT(A)'s that the assessee submitted the ledger accounts of the above parties and bank statements extracts evidencing the payments through bank cheque. I noted that facts of this case are similar to the case of Hon'ble High Court of Gujarat in the case of Simit P Seth V CIT (2013) 356 ITR 451(Guj) wherein it had on occasion to deliver its judgment by confirming the decision of the ITAT which has estimated the disallowance at 12.5% of the disputed bogus purchases to meet the end of Justice. Even now before me also revenue could not dislodge the factual aspects noted by CIT(A). I find that the CIT(A) has rightly applied the profit rate at the rate of 12.5% and I confirm the same. This issue of both the appeals is dismissed.

6. The next common issue in these cross appeals of Revenue and assessee in ITA No.7515 & 6943/Mum/2018 is as regards to the order of CIT(A) restricting the penalty levied under section 271(1)(c) of the Act on the quantum addition of profit

rate of 12.5% as against penalty levied by AO on the quantum addition of profit rate of 25%.

7. I have heard the rival contentions and gone through the facts and circumstances of the case. I noticed that on identical circumstances the Tribunal is consistently deleting the penalty levied by AO under section 271(1)(c) of the Act on estimation of profit rate in respect to bogus purchases. I noted that this issue is squarely covered in ITA No. 1727/Mum/2018 vide order dated 16.05.2019, wherein it is held as under: -

"3. Upon careful consideration, upon perusal of assessee's submissions during appellate proceedings, we find that the assessee's plea revolve around the fact that the purchases were made under bona-fide belief and in good faith that the suppliers were genuine. The suppliers used to visit assessee's shop to supply the material as per routine practice. The TIN of the suppliers was found active at the time of purchase of goods. We find the explanation to be plausible one and the overall conduct of the assessee do not inspire us to confirm the penalty. By deleting the same, we allow ground nos. 1 & 2."

8. As the issue is covered, I find that no infirmity in the order of CIT(A) deleting the penalty. Hence, I delete the penalty and



appeal of assessee is allowed and that of the Revenue is dismissed.

9. In the result, both the appeals of the Revenue and assessee, (in ITA Nos. 6942 & 7514/Mum/2018 i.e. quantum appeals) are dismissed. Further, the appeal of Revenue in ITA No. 6943/Mum/2018 is dismissed. Further, the appeal of assessee in ITA No. 7515/Mum/2018 is allowed.

Order pronounced in the open court on 19.12.2019.

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 19.12.2019

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

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//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**