

आयकर अपीलिय 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 No. 6990/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

आयकर अपील सं./ ITA No. 6989/Mum/2018

(निर्धारण वर्ष / Assessment Year 2010-11)

The Income Officer Ward 17(2)(5) Room No. 123A, 1 st Floor, Aayakar Bhawan, Churchgate, Mumbai-400 020	बनाम / Vs.	Palam Stove Industries 2 nd Floor, Shirin Mansion 14, Kolsa Cross Lane, Phydhonie, Mumbai-400 003
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAAFP1331M		

अपीलार्थी की ओर से / Appellant by	:	Shri Akhtar H. Ansari, DR
प्रत्यर्थी की ओर से / Respondent by	:	None

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

आदेश / O R D E R

महावीर सिंह, न्यायिक सदस्य/

PER MAHAVIR SINGH, JM:

These appeals of the Revenue are arising out of the orders of Commissioner of Income Tax (Appeals)-58, Mumbai [in short CIT(A)], in Appeal Nos. CIT(A)-58, Mumbai/10328 & 10327/2017-18 even dated 28-09-2018. The Assessments were



framed by the Income Tax Officer, Ward-17(2)(5), Mumbai (in short ITO / AO) for the A.Ys. 2009-10, 2010-11 vide order dated 11.02.2015 & 26.08.2015 respectively, under section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in these appeals of Revenue is against the order of CIT(A) restricting the addition made by the AO by applying the profit rate at the rate of 8.5 % of the bogus purchases. The facts and circumstances are exactly identical in both the assessment years i.e. AYs 2009-10 & 2010-11 except quantum, hence, we will take the facts from 2010-11 in ITA No. 6989/Mum/2018 and decide the issue.

3. Briefly stated facts are that the assessee engaged in the business of Manufacturers and exporters of Kerosene Stove Lanterns. 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 ₹1,71,790/- for AY 2010-11 & ₹9,01,814/- for AY 2009-10 as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

2009-10

<i>"Sl No.</i>	<i>Name of party</i>	<i>Amount</i>
1.	<i>Centurian Sales Corporation</i>	<i>3,640/-</i>



2.	Shanti Enterprises	3,11,971
3.	Surya Enterprises	5,86,203
	Total	9,01,814

2010-11

"Sl No.	Name of party	Amount
1.	Kantilal Borthers	1,71,790
	Total	1,71,790

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 23.46% to ₹2,11,566/- for AY 2009-10 and 23.46% to Rs. 40,302/- for AY 2010-11 to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restricted the disallowance at 8.5% of the bogus purchases by observing in para as under: -

"5. Ground 2 to 4 are identical in nature to grounds 2 and 3 adjudicated in appellate order No. CIT(A)-58, Mumbai/10327/2017-18 of even date for AY 2009-10. On account of same reasons, same decision applies. The Assessing Officer is directed to replace the rate of disallowance of 23.46% to 8.5%. The grounds are treated as partly allowed."



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). Going by the nature of the trade, I find that the CIT(A) has rightly applied the profit rate at the rate of 8.5% and I confirm the same. This issue of Revenue's appeal is dismissed.

6. As regards to AY 2010-11, the same are the fact and hence, the order of CIT(A) in that appeal also confirmed.

7. In the result, the appeal of the Revenue is dismissed.

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**