

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. 6879/Mum/2018

(निर्धारण वर्ष / Assessment Year 2011-12)

The Income Tax Officer Ward 27(3)(5) Room No. 428, 4 th Floor, Tower No.6, Vashi Railway Station Complex, Vashi, Navi Mumbai-400 703	बनाम/ Vs.	Shri Vrajlal Manilal Shah 37, Vadhani Industrial Esate, L.B.S. Road, Opp. Shreyas Cinema, Ghatkopar (W), Mumbai-400 086
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./ PAN No. AGPS2788D		

अपीलार्थी की ओर से / Appellant by	:	Shri Akhtar H. Ansari, DR
प्रत्यर्थी की ओर से / Respondent by	:	Ms Dinkle Hariya, 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:

This appeal of the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)]-25, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-25/IT-190/2015-16/270 dated 04.09.2018. The Assessment was framed by the Income Tax Officer, Ward-27(3)(5), Mumbai (in short ITO / AO) for the A.Y. 2011-12 vide order dated 09.03.2015 under section 143(3) read



with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal 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 12.5 % of the bogus purchases.

3. Briefly stated facts are that the assessee engaged in the business of manufacturing of Vacuum Forming/ Termo Forming of Plastic items. 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 ₹10,02,782/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

<i>"Sl No.</i>	<i>Name of party</i>	<i>Amount</i>
1.	<i>Vardhman Traders</i>	<i>3,03,188</i>
2.	<i>Shradhha Trading Co.</i>	<i>3,40,494</i>
3.	<i>Varun Enterprises</i>	<i>3,59,100</i>
	<i>Total</i>	<i>10,02,782</i>

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 the whole amount as

unproved purchases to ₹10,02,782/- 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: -

"6. In view of the above discussed factual matrix and precedents, I am of the view that estimation of 12.5% as profit embedded in impugned purchases shown from the alleged hawala party and adding the same to the total income returned, would meet the end of justice. Therefore, I direct the AO to estimate profit @12.5% of the alleged bogus purchases, which works out to ₹1,25,347 (@12.5% of ₹10,02,782/-) and restrict the addition to ₹1,25,347/-. The appellant gets a relief for the balance amount of ₹8,77,435/- (₹10,02,782-₹1,25,347/-.

Hence, grounds of appeal No.1,2 & 3 are 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). 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 Revenue's appeal is dismissed.

6. 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