



आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ I.T.A. No.5858/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2010-11)

Income tax Officer-24(3)(1) Room no.415, 4th Floor Piramal Chamber, Parel Mumbai- 400 012.	बनाम/ Vs.	Shri Naresh S. Khanna 302-B, Sanjivan Enclave Seven Bunglow, J.P. Road, Andheri(W), Mumbai- 400 058.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAHPK-3259-J		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

C.O. No.246/Mum/2019
Arising out of ITA No. 5858/Mum/2018]
(निर्धारण वर्ष / Assessment Year: 2010-11)

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(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Abhishek Jhunhunwala-Ld. AR
Revenue by	:	Ms. Kavita P. Kaushik-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	14/01/2020
घोषणा की तारीख / Date of Pronouncement	:	14/01/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2010-11 contest the order of Ld. Commissioner of Income-



Tax (Appeals)-36, Mumbai, [in short referred to as 'CIT(A)'], Appeal No. CIT(A)-36/IT-237/ITO-24(3)(1)/2017-18 order dated 25/07/2018 on following grounds of appeal: -

The Ld. CIT(A) has erred on facts and in law in restricting the disallowance made by the AO to only 12.5% of the total bogus purchases of Rs.66,97,799/-, notwithstanding that the assessee could not prove the genuineness of the purchase by either producing the supplier parties or by furnishing other documents which could have conclusively established receipts of the goods claimed to have been purchased.

1.2 The assessee has filed cross-objections against the same which is stated to have been filed with a delay of 36 days. The assessee seek condonation of delay due to adverse medical conditions being faced by the assessee. The relevant medical records have been placed on record. Keeping in view the fact that the assessee is a senior citizen, the bench formed an opinion that the delay was to be condoned. Accordingly, the matter was proceeded with on merits. The assessee, in its cross-objections assails the additions sustained by learned first appellate authority.

1.3 We have carefully heard rival submissions and perused relevant material on record. We have also deliberated on judicial pronouncements cited before us. Our adjudication to subject matter of the appeal would be as given in the succeeding paragraphs.

2.1 Facts on record would reveal that the assessee being resident individual stated to be engaged as dealer of audio visual equipment under proprietorship concern namely M/s Khanna Exports, was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 22/12/2017 wherein the income of the assessee was determined at Rs.83.64 Lacs, after sole addition of alleged bogus purchases for Rs.66.97 Lacs as against



returned income of Rs.16.66 Lacs e-filed by the assessee on 04/10/2010 which was processed u/s.143(1).

2.2 Pursuant to receipt of certain information from Sales Tax Department, Govt. of Maharashtra / DGIT (Investigation), it transpired that the assessee obtained bogus purchases bills aggregating to Rs.66.97 Lacs from as many as 6 entities, the details of which have already been extracted in para-5 of the quantum assessment order. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on 31/03/2017 which was followed by statutory notices issued u/s 143(2) and 142(1) wherein the assessee was directed to substantiate the purchase transactions. The assessee reflected turnover of Rs.321.35 Lacs with GP / NP rates of 4.94% % 3.57% respectively.

2.3 The assessee defended the purchases by furnishing copies of purchase invoices, bank statements evidencing payment to suppliers through banking channels, ledger extracts etc. However, notices issued u/s 133(6) to all the entities, to confirm the transactions, were returned undelivered by the postal authorities. The assessee failed to produce any of the suppliers but relied on the documents furnished in support of the purchase transactions. The assessee also failed to provide the latest addresses of the suppliers. Finally, not satisfied with assessee's submissions / explanations, the stated purchases were treated as bogus purchases and added to the income of the assessee.

3. The learned CIT(A), after considering assessee's submissions and *inter-alia*, relying upon the decision of Hon'ble Gujarat High Court in **CIT V/s Simit P.Sheth (355 ITR 290)** restricted the additions to 12.5% of



these purchases. The said adjudication has given rise to cross-appeals before us. The revenue is aggrieved by reduction in additions whereas the assessee is aggrieved by addition of 12.5% as sustained by Ld. CIT(A).

4. After careful consideration of orders of lower authorities and after appreciating the arguments advanced by respective representatives, we are of the considered opinion that there could be no sale without actual purchase of material keeping in view the assessee's nature of business. Undisputedly the assessee was in possession of primary purchase documents and the payments to the suppliers were through banking channels. The assessee's books of accounts were subjected to audit. However, at the same time, the assessee miserably failed to substantiate the purchases and failed to produce any of the suppliers to confirm the transactions. Notices issued u/s 133(6) to all the entities elicited no response and therefore, the primary onus casted upon assessee, in this regard, remained undischarged.

5. The stated factual matrix, in our considered opinion, would make it a fit case to make estimated additions to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey / unorganized market and undue benefit of VAT against such bogus purchases, which learned first appellate authority has rightly done so. However, we find that the assessee has reflected GP rate of 4.94% in this year which is more than GP rate reflected in preceding two years. Therefore, we scale down the estimated additions from 12.5% to 8% of alleged bogus purchases of Rs.66,97,799/-. The same comes to



Shri Naresh S.Khanna
Assessment Year :2010-11

Rs.5,35,824/- . The impugned order stand modified to that extent. The Ld.AO is directed to re-compute the income of the assessee.

6. Resultantly, the revenue's appeal stands dismissed whereas the assessee's cross-objections stands partly allowed to the extent indicated in the order.

Order pronounced in the open court on 14th January, 2020.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 14/01/2020

Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.