



ITA No.195/Mum/2019
Shri Deepak Kumar Kanjibhai Patel
Assessment Year :2011-12

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

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

आयकर अपील सं./ I.T.A. No 195/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2011-12)

Shri Deepak Kumar Kanjibhai Patel 503, 5 th Floor, Shivalaya Heights, Veera Desai Road, Andheri West, Mumbai – 400058.	बनाम/ Vs.	ITO-24(1)(5), Room No. 523, 5 th Floor Piramal Chambers, Lalbaugh Parel, Mumbai – 400012.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AYRPP-4225-F		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Mrs. Ruchi M Rathod-Ld. AR
Revenue by	:	Ms. Jothilakshmi Nayak- Ld.DR

सुनवाई की तारीख/ Date of Hearing	:	28/01/2020
घोषणा की तारीख / Date of Pronouncement	:	05/02/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2011-12 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-35/ITO-24(1)(5)/2016-17 dated 27/09/2018* on following grounds of appeal: -

1. Learned CIT(Appeal) erred in confirming the entire additions made by the AO for an amount of Rs. 4437459/- (12.5% of Rs. 35499673/-) and erred in treating the same as bogus purchase.



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2. Learned CIT(Appeal) erred in not considering the documents submitted and failed to appreciate the submission brought on record.
3. Learned CIT(Appeal) erred in not considering the judgments brought on record.
4. Learned CIT(Appeal) erred in confirming the assessment wherein the basis of information received from Sales Tax Authorities which contrary to the material fact on record and more particularly disallowance is contrary to the provisions of Section 69C since the source is in dispute and not the purchase expenditure.

As evident from grounds of appeal, the sole subject matter of the appeal is estimated additions on account of *alleged bogus purchases*.

2. We have carefully heard the submissions made by both the representatives. We have also perused relevant material on record. Our adjudication to issue raised in the appeal would be as given in succeeding paragraphs.

3.1 Facts on record would reveal that the assessee being resident individual stated to be engaged in trading of plywood, firewood, ply etc. under proprietorship concern namely *M/s Ekal Traders*, was assessed for year under consideration 143(3) r.w.s. 147 on 14/03/2016 wherein the assessee was saddled with impugned estimated additions of Rs.44.37 Lacs on account of *alleged bogus purchases*. The original return of income was filed by the assessee on 30/09/2011 at Rs.10.17 Lacs, which was processed u/s 143(1).

3.2 Pursuant to receipt of certain information from DGIT (Inv.) / Sales Tax Department, Govt. of Maharashtra, it transpired that the assessee obtained bogus purchases bills aggregating to Rs.354.99 Lacs from as many as 17 entities, the details of which have already been extracted in para-2.1 of the quantum assessment order. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on



02/03/2015 which was followed by statutory notices wherein the assessee was directed to substantiate the purchase transactions.

3.3 The assessee defended the purchases vide its reply filed on 19/01/2016. However, notices issued u/s 133(6) to all the above parties, to confirm the transactions, were returned back undelivered by Postal Authorities. Therefore, Ld. AO formed a belief that the assessee failed to discharge the primary onus of proving the purchase transactions. Consequently, Ld. AO made an estimated addition of 12.5% against these purchases, which came to Rs.44.37 Lacs.

4. Before Ld. CIT(A), the assessee drew attention to the fact that during the course of assessment proceedings, it had furnished purchase invoices, ledger extracts, statement of corresponding sales made against these purchases, bank statements evidencing payment through banking channels and therefore, the additions were not justified. However, Ld. CIT(A), after appreciating the factual matrix, formed an opinion that the correct approach would be to estimate the additional profit earned on these purchases. Therefore, finding the estimation of 12.5% to be quite fair & reasonable, the additions were confirmed. Aggrieved, the assessee is under further appeal before us.

5. The Ld. AR has pleaded for reasonable estimation keeping in view the fact that the assessee has already declared Gross Profit of more than 5% in the year under consideration. The Ld. DR has submitted that estimate was quite fair and reasonable and therefore, the impugned order would not require any indulgence on our part.

6. Upon due consideration, we are of the opinion that there could be no sale without actual purchase of material particularly when the



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assessee was into trading activities. The sales turnover has not been disputed / disturbed by the revenue. The assessee was in possession of primary purchase documents and the payments to the suppliers were through banking channels. However, at the same time, the assessee failed to produce even a single supplier out of 17 suppliers to confirm the transactions. Notices issued u/s 133(6) did not elicit any satisfactory response. 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. Keeping in view the fact that the assessee had already reflected Gross Profit Rate of more than 5% during the year, we reduce the estimation to 8% of alleged bogus purchases of Rs.3,54,99,673/- which comes to Rs.28,39,974/-. The orders of lower authorities stand modified to that extent. The Ld.AO is directed to recompute the income of the assessee in terms of this order.

7. The appeal stands partly allowed in terms of our above order.

Order pronounced in the open court on 05th February, 2020.

Sd/-
(Mahavir Singh)
उपाध्यक्ष / **Vice President**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 05/02/2020
Sr.PS. Jaisy Varghese



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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

आदेशानुसार/ BY ORDER,

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