

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH
MUMBAI
BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER**

**ITA No. 759 & 760/Mum/2019
(Assessment Year: 2009-10 & 2010-11)**

I.T.O.-21(1)(3), Room No. 106, 1 st Floor, Piramal Chambers, Parel, Mumbai-400012.	Vs.	Devendra Singh Narula, B-8, Mahim Ind. Estate, Off Mori Road, Mahim (West), Mumbai-400016.
PAN/GIR No. AAAPN 4638 D		
(Appellant)	..	(Respondent)

Revenue by	Shri R.K. Gubgotra (JCIT-DR)
Assessee by	None
Date of Hearing	05/02/2020
Date of Pronouncement	06/02/2020

आदेश / ORDER

PER: R.C. SHARMA, A.M.

These are the appeals filed by the revenue against the common orders of the Id. CIT(A)-48, Mumbai dated 30/11/2018 for the A.Y. 2009-10 and 2010-11 in the matter of order passed U/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act).

2. In both these appeals, the revenue is aggrieved by the order of the Id. CIT(A) for reducing addition to the extent of 12.5% of alleged bogus purchases.

3. I have gone through the orders of the authorities below and found that the assessee is engaged in the trading of gift articles. The

A.O. got information from the Sales Tax Department regarding assessee taking bogus purchase bills. After making enquiry, the A.O. added 100% of alleged bogus purchases in assessee's income. By the impugned order, the Id. CIT(A) has restricted the addition to the extent of 12.5% after observing as under:

“Quantum Addition Issue :- Coming to the issue regarding addition on account of bogus purchases, it is seen that assessee had claimed purchases from the parties involved in providing bogus bills as per the preliminary investigation made by the investigation wing. When the assessee was confronted to substantiate the genuineness of the purchases, the assessee in all the 3 assessment years failed to substantiate the purchases and the receipt of goods through corroborative evidences. Merely submitting of Ledger account, sales invoices and bank statement are not enough when the transaction itself is being questioned. The onus is entirely on assessee to submit the contemporary evidences, which would corroborate the purchases made by assessee from the alleged party. Ledger account, sales invoices and bank account are only internal and self justifying documents. Assessee is bound to submit the documents in the form of delivery challan, stock register and internal consumption register. Since assessee is engaged in the trading activity, it is held by Assessing Officer for assessment year 2010-11 and assessment year 2011-12, that in the absence of receipt of goods from the parties involved assessee would have purchased the goods from the grey market as the sales of the assessee were not disturbed by the assessing officer. Therefore, holding that there would be some profit element involved in this whole transaction. the assessing officer made addition of the profit element involved in the whole process. The addition for assessment year 2010-11 was 16.33% of the bogus goods value while it was 12.5% for the assessment year 2011-12. However for

assessment year 2009-10, assessing officer made the addition of the entire amount of Rs,10,92,411/- and also commission amount of 2% of rupees to Rs.22,222/-. The argument of the Assessing Officer for A.Y. 2009-10 was that assessee had not made any purchases and therefore, there were actually no sales also of these goods. There by the assessing officer concluded that assessee had introduced his own black money without actually having made the sales of this value. Therefore, assessing officer had made the addition of entire amount of Rs 10,92,411/- as bogus sales.

Estimation as valid tool in the hands of Assessing Officer:-

- i. It would be relevant here to discuss the legal position regarding best judgement assessments and the extrapolation of the income/turn-over on estimation basis Estimation and extrapolation are valid tools in the hands of A O while making assessment of the income However, it is settled position of law that such estimation or extrapolation must be logical and bonafide estimation The ratio of judgement laid down by Hon'ble Supreme Court in the case of Commissioner of Sales Tax, M P. v/s H.M Esufali Ali H M Abdulali is relied upon while deciding this appeal. Hon'ble Supreme Court while deciding the Civil Appeal No 1068 and of 1970 had held best judgement assessment/estimation as valid tool in the hands of officer which is made on the basis of material before him Hon'ble Apex Court has held that so long as the estimate made by him is not arbitrary and has nexus with the facts discovered, it cannot be questioned. It is further held that, in estimating any escaped turnover it is inevitable that there is some guesswork. The assessing authority while making the 'best-judgement' assessment no doubt should arrive at its conclusion without any bias and on rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a*

bona fide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation. It is his best-judgement and not of any one else's.

- ii. *The ratio of the above decision of Hon'ble Supreme Court when applied to the facts of present case in appeal before the undersigned, would lead to fair and logical conclusion by AO to hold that assessee would have purchased the goods actually from the grey market and therefore the ends of justice would be met if the profit involved in the entire adventure is brought to tax. The conclusion drawn by assessing officer for assessment year 2009-10 is not based on any specific finding in the assessee's case but is a mere presumption on the part of assessing officer and therefore is without any basis. Considering the overall facts of the case, it would be fair and reasonable to bring to tax profit of 12.5% of the entire bogus purchases for each of the three assessment years. This profit of 12.5% would be the total estimated profit in this venture and therefore separate addition of 2% for assessment year 2009-10 is to be deleted.*

In view of above discussion and findings Assessing Officer is directed to limit the addition for assessment year 2009-10 to only 12.5% of total bogus sales of Rs.10,11,0821-. For assessment year 2010-11, Assessing Officer is directed to reduce the addition to 12.5% of the bogus purchases of Rs.76,43,032/- in place of addition made of 16.33%. For assessment year 2011-12 assessee does not get any relief as Assessing Officer has already made a fair addition of 12.5% of the total bogus sales."

4. The revenue is in further appeal before the ITAT against the above order of the Id. CIT(A).

5. The Id. DR has relied on the decision of the Coordinate Bench dated 23/10/2017 in ITA No. 2960/Mum/2016 in the case of Soman Sun Citi wherein entire bogus purchases were added in assessee's income. Accordingly, it was pleaded that the Id. CIT(A) was not justified in restricting addition only to the extent of 12.5% when the entire purchases were found to be bogus.

6. I have considered the contentions of the Id. DR and also gone through the decision of the Coordinate Bench as relied by the Id DR. From the record, I found that the Id. CIT(A) has dealt with the issue threadbare and after applying decision of the Hon'ble Supreme Court in the case of Commissioner of Sales Tax, M P. v/s H.M Esufali Ali H M Abdulali to the facts of the instant case, came to the conclusion that it would be reasonable to bring to tax profit of 12.5% of the entire bogus purchases. The detailed finding so recorded by the Id. CIT(A) has not been controverted by bringing any positive material on record. However, in the case of Soman sun City as relied on by the Id. DR, the facts were entirely different and finding of CIT(A) was confirmed by the Tribunal. However, in the present case, we have confirmed the findings of Id. CIT(A) which are as per material on record. Accordingly, I do not find any reason to interfere in the order of the Id. CIT(A), hence I uphold the same.

7. Since the facts and circumstances of both the years under consideration are pari materia, therefore, by following the reasoning given in the appeal for the A.Y. 2009-10, I also uphold the action of the Id. CIT(A) for the A.Y. 2010-11.

8. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 06th February, 2020.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 06/02/2020

*Ranjan

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai