

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ ITA No. 1363/Mum/2019
(निर्धारण वर्ष / Assessment Years 2010-11)

The Asst. Commissioner of Income Tax, Circle 28(2) Room No. 307, 3 rd Floor, Tower No.6, Vashi Railway Station Complex, Vashi, Navi Mumbai-400 703	बनाम/ Vs.	Millenium Enterprises C-5/2.3 C, Sector 5, CBD Belapur, Navi Mumbai-400 614
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAKFM9589J		

अपीलार्थी की ओर से/ Appellant by	:	Shri Bhora Ram, Sr. DR
प्रत्यर्थी की ओर से/ Respondent by	:	None

सुनवाई की तारीख / Date of hearing:	05.03.2020
घोषणा की तारीख / Date of pronouncement:	01.06.2020

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष /

PER MAHAVIR SINGH, VP:

This appeal of Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-26, Mumbai, [in short CIT(A)], in ITA No. CIT(A)-26/IT/779/2013-14 dated 31.12.2018. The assessment was framed by the (in short ACIT/ITO/ AO) for the A.Y. 2010-11 vide order dated



25.03.2013 under section 143(3) 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 Assessing Officer by applying the profit rate at 12.5% of the bogus purchase. For this Revenue has raised following ground: -

"1. Whether on the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in directing the A.O. to restrict the addition of bogus purchases to 12.5% as against 100% addition made by the A.O., relying on the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Seth, 356 ITR 451?"

3. Briefly stated facts are that the assessee engaged in the business of development of real estate properties. 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. The assessee also made alleged purchases from these hawala dealers amounting to ₹10,14,743/- 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>Anuradha Traders</i>	<i>1,79,188</i>
2.	<i>Saj Enterprises</i>	<i>4,58,519</i>
3.	<i>Bhumi Sales Corporation</i>	<i>3,07,372</i>



4.	V.M. Udyog	69,664
	Total	10,14,743

4. The AO issued noticed under section 133(6) to the parties which returned back with the remark as "left" and assessee failed to produce these parties. 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. But the assessee could not produce transportation bills, delivery challans and weighment slips. According to the AO, the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of unproved purchase at Rs. 10,14,743/- 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 8.1 by following the decision of Hon'ble Gujarat High court in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj) by observing as under: -

"8.1 Ground No. 1 of the appeal are against addition of Rs, 10,14,743/- as bogus purchases. As per the investigations carried out by the Sales Tax Authorities, the aforementioned party was found to be involved in giving accommodation entries only without actually supplying the goods. The logical



inference is that the purchases made by the appellant would also be in the nature of accommodation entries only. To verify the same, the AO had made enquiries by issuing notices u/s 133(6) which were returned unserved by the postal authorities. This party was found to be non-existent at the address given by the appellant. The appellant also failed to provide the latest address of the party. During the scrutiny assessment the appellant furnished details of purchases and corresponding sales. However, the appellant could not produce the party before the AO inspite of opportunity being given. The appellant also failed to produce delivery challans or transportation details. The onus of proving the genuineness of such purchases is on the appellant which the appellant had not been able to discharge fully. When the hawala party had admitted on oath that it had given accommodation entries only without actually supplying the goods, the genuineness of purchases made from these parties will have to be considered taking this into consideration while



examining the documentation submitted by the appellant in support of its claim. The documentary evidences such as purchase bills, payments by cheques, etc. would all have been orchestrated to present a facade of genuineness and does not necessarily mean that the purchases from these parties are genuine. The Courts have held that payment by cheque by itself is not sacrosanct so as to prove genuineness of purchases when the surrounding circumstances are suspect. However, the appellant has shown onward sales which has not been doubted by the Assessing Officer. Since there can be no sales without corresponding purchases, the only logical explanation is that the appellant would have made purchases from undisclosed parties in the grey market at lower rates and purchases were shown as being made from the impugned parties to suppress its profits. In such a situation, the various Courts including the Hon'ble Gujarat High Court in the case of CIT vs Simit P. Sheth, 356 ITR 451 have held that not the entire purchases but only the profit element embedded in these



purchases was to be disallowed and accordingly held that 12.5% of the purchases will be reasonable as profit on margin against the bogus purchases. In view of this decision of Hon'ble Gujarat High Court (supra), the addition made by the AO is restricted to 12.5% of the total alleged bogus purchases amounting to ₹10,14,743/- which should sufficiently cover the profit element embedded in the impugned purchases. The appellant's grounds of appeal are 'Partly allowed'.

5. I have considered the issue and gone through the facts and circumstances of the case. I find that the CIT(A) has rightly applied the profit rate at the rate of 12.5% and now, before me Revenue could not find any fault in the order of CIT(A) in estimating the profit at the rate of 12.5% of the bogus purchases. Hence, I confirm the same. This issue of Revenue's appeal is dismissed.

6. In the Result, the appeal of Revenue is dismissed.

Order pronounced in the open court on 01.06.2020

Sd/
(महावीर सिंह /MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)



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,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**