

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एन. के. प्रधान लेखा सदस्य के समक्ष।

BEFORE SRI MAHAVIR SINGH, VP AND SRI NK PRADHAN, AM

आयकरअपीलसं./ ITA No. 3236/Mum/2019

(निर्धारणवर्ष / Assessment Years 2010-11)

The Income-tax Officer Ward 28(3)(3), room No.319, 3 rd Floor, 6 th Tower, Vashi Railway Station Complex, Vashi, Navi Mumbai-400 703	बनाम/ Vs.	Shri Sureshkumar Kadri W-96-C, MIDC Industrial Area, Rabale, Navi Mumbai-400 701
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
स्थायीलेखासं./PAN No. ANBPK 8662J		

अपीलार्थी की ओर से/ Appellant by	:	Shri Bhoopati, DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Bhadnesh Doshi, AR

सुनवाईकीतारीख/ Date of hearing:	27.07.2020
घोषणाकीतारीख/ Date of pronouncement:	27.07.2020

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/10722/2016-17 dated 13.03.2019. The



assessment was framed by the Income Tax Officer, Ward28(3)(3), Mumbai (in short ITO/ AO) for the A.Y.2010-11 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 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 Ld. CIT(A) has erred in directing the A.O. to restrict the addition of bogus purchases to 12.5% as against addition of 100% made by the Assessing Officer on account bogus purchases without appreciating the fact that parties from whom these purchases were made proven accommodation entry providers, as concluded by Sales Tax Authorities pursuant to the investigation carried out by them?"

3. Briefly stated facts are that the assessee engaged in the business of Industrial Valves Manufacturing. 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 Rs. 33,39,588/- 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.	Donear Trading Pvt. Ltd.	1,45,775
2.	Siddhivinayak Steel	67,500
3.	G.K. Industrial Corporation	12,78,179
4.	Asian Steel	1,16,100
5.	Ridhi Sales Corporation	6,62,018
6.	Nimesh Steel Private Limited	10,70,016
	<i>Total</i>	33,39,588

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. According to the AO, the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of unproved purchase at Rs. 33,39,588/- 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 7 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: -



"The Grounds No. 1 & 2 of the appeal are against the addition of Rs. 33,39,588/- as non-genuine purchases. As per the investigations carried out by the Sales Tax Authorities the aforementioned parties were 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 in spite 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 hawaia 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 r 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. The Hon'ble High Court in this case has held that profit margin of 12.5% of the bogus purchases will be reasonable. Respectfully following the Order in the case of Simit P. Sheth the addition is restricted to 12.5% of the bogus purchases of `33,39,588/-. These grounds of appeal are partly allowed."

5. We have considered the issue and gone through the facts and circumstances of the case. Before us, the assessee has filed copy of Tribunal order in assessee's own case for Assessment Year 2009-10 in ITA No. 4804/Mum/2017 vide dated 30.08.2019, wherein Tribunal has accepted the restriction of 12.5% net profit on the alleged bogus purchase and for this Tribunal observed in Para 5 as under: -

"5. We have heard the argument advanced by the Ld. Representative of parties and perused the record. The AO raised the addition on the basis of this fact that the assessee failed to provide the satisfactory documents in support of alleged purchases and also failed to produce the parties. In the present case, the AO raised the 100% addition of the bogus purchases which was confirmed by CIT(A). In the instant case, the sale is not doubted. No sale could be done without actual purchases. It is settled law when sales are not doubted then 100%



disallowance for bogus purchase cannot be done. In this regard, we also find support of law settled by Hon'ble Jurisdictional High Court of Bombay in the case of' Nikunj Eximp Enterprises (in writ petition no.2860 dated 18.06.2014). In the present case, it seems that the assessee purchased the material from the grey market and the assessee could save the tax and other expenses on account of state exchequer. In the present case, the assessee was in the business of Industrial Valves Manufacturing. In a such circumstance, we are of the view that the addition is liable to be restricted to the extent of 12.5% of the bogus purchases which will certainly made the end of justice. In this regard, we also find support of the law settled by Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth 356 ITR 0451. On seeing the facts and circumstances of the present case, we are of the view that the addition to the extent of 12.5% of the bogus purchase is justifiable, therefore, we direct the Assessing Officer to restrict the addition to bogus purchase to the extent of 12.5%. Accordingly, we decide this issue partly in favour of the assessee against the revenue."



6. Hence, respectfully following the Tribunal decision in assessee's own case, we confirm the order of CIT(A). The appeal of Revenue is dismissed.

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

Order pronounced in the open court on 27.07.2020.

Sd/-

(एन. के. प्रधान/ NK PRADHAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 27.07.2020

सुदीप सरकार, व. निजी सचिव/ *Sudip Sarkar, Sr.PS*

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai