

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),  
'G' BENCH MUMBAI**

**BEFORE SHRI JUSTICE P P BHATT, PRESIDENT**

**&**

**SHRI M. BALAGANESH, AM**

**ITA No.4997/Mum/2017  
(Assessment Year :2007-08)**

**&**

**ITA No.4998/Mum/2017  
(Assessment Year :2008-09)**

ACIT 17(3) Room No.137, 1 <sup>st</sup> Floor Aayakar Bhavan M.K.Marg, Mumbai – 400 020	Vs.	M/s. Saif Marine 220, 2 <sup>nd</sup> Floor, Vyapar Bhavan 49, P.D.Mello Road Masjid Bunder Mumbai – 400 009
<b>PAN/GIR No.AAPFS3198E</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri V. Vinodkumar, Sr. AR
Assessee by	None
<b>Date of Hearing</b>	<b>15/09/2020</b>
<b>Date of Pronouncement</b>	<b>06/10/2020</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M.):**

These appeals in ITA Nos.4997/Mum/2017 & 4998/Mum/2017 for A.Y.2007-08 & 2008-09 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-28, Mumbai in appeal No.CIT(A)-28/IT-635/ACIT-17(3)/2014-15 to CIT(A)-28/IT-638/ACIT-17(3)/2014-15 dated

03/04/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/03/2014 by the Id. Dy.CIT-Rg.13(1), Mumbai (hereinafter referred to as Id. AO).

1.1. As identical issues are involved in both the appeals, they are taken up together and disposed off by this common order for the sake of convenience.

1.2. None appeared on behalf of the assessee. With the consent of the Id. DR, the appeal of the revenue for A.Y.2007-08 is taken up as the lead case and the decision rendered thereon would apply with equal force for A.Y.2008-09 in view of the identical facts except with variance in figures.

2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in restricting the disallowance made on account of unverifiable purchases to the extent of 3% of value thereof as against 10% made by the Id. AO in the assessment.

3. We have heard the Id. DR. We find that the assessee is a partnership firm engaged in the business of Ship Chandelling and are General Merchants of shipping supplies. The assessee had filed its return of income for the A.Y.2007-08 on 27/10/2007 declaring total income of Rs.41,28,785/- on which no assessment u/s.143(3) of the Act was done. We find that the entire sales are made by the assessee to Shipping Corporation of India in terms of tenders. The Id. CIT(A) had also observed that assessee has been making these sales to Shipping Corporation of India with low margins. The Id. AO observed that assessee had made purchases from the following parties whose names appeared in the

website of Sales Tax department, Government of Maharashtra as tainted dealers:-

<b>Sr. No.</b>	<b>Name of the party</b>	<b>Amount</b>
1	Gaurang Trading Company	45,42,706/-
2	Globex International	15,47,889/-
3	Harsh Enterprises	4,71,375/-
4	Meetali Industries	52,63,510/-
5	Outdoor Marketing Pvt. Ltd.,	2,53,752/-
6	Pushp Hari Electricals & Engineering Pvt. Ltd.,	5,28,754/-
7	Shyam Corporation	15,51,173/-
8	Carolin Enterprises	23,27,485/-
	Total	1,64,86,544/-

3.1. This information was passed on by the Sales Tax department to the Income Tax Investigation Wing based on which the assessment of the assessee was sought to be reopened. By issuance of notice u/s.148 of the Act, the assessee filed a reply to the Id. AO that the return already filed may be treated as the return in response to the notice u/s.148 of the Act and sought for reasons recorded for reopening which was duly supplied to the assessee.

3.2. We find that the assessee had furnished the names and address of the aforesaid suppliers, details of products purchased, VAT registration, addresses of suppliers, purchase bills and copies of bank statements, evidencing the payments being made by account payee cheques to those suppliers before the Id. AO. However, the Id. AO observed that assessee was not able to produce any evidence to prove the actual movement of goods from these suppliers in the form of transportation receipts, lorry

receipts, gate pass etc., The Id. AO also observed that assessee is not maintaining any stock register. However, considering the fact that assessee had made its entire sales only to Shipping Corporation of India with low margins, he observed that assessee had made purchases in the grey market and had made sales to Shipping Corporation of India. By making purchases in the grey market, assessee would have derived profit in the form of saving in indirect taxes with incidental profits thereon which was estimated at 10% by the Id. AO and accordingly, the Id. AO made the addition of Rs.14,65,479/- on the net purchases (gross purchases less VAT) and completed the assessment. We find that the Id. CIT(A) on due appreciation of the fact that the entire sales were made only to Shipping Corporation of India Ltd., with low margins and also in view of the fact that the Id. AO had not disputed the corresponding sales made out of disputed purchases and by placing reliance on the decision of this Tribunal in the case of Mercury International in ITA No.7584 to 7588/Mum/2014 for A.Yrs. 2007-08, 2011-12 dated 24/08/2016 by noting that the facts of the assessee and facts before this Tribunal in Mercury International are virtually identical and accordingly, restricted the addition to 3% of the value of disputed purchases. Against this order of the Id. CIT(A), only revenue is in appeal before us and assessee has not preferred any appeal. We find that the Id. CIT(A) had considered the entire modus operandi of the assessee and had accepted the fact that the assessee had indeed made sales out of the disputed purchases and hence, it could be safely presumed that the assessee could have only made purchases from the grey market in order to have some saving in indirect taxes and incidental profits thereon. We find that the Id. CIT(A) had also placed reliance on the Co-ordinate Bench of this Tribunal in the case of Mercury International referred to supra wherein under identical facts and circumstances, this Tribunal had restricted the profit element

embedded in the value of disputed purchases at 3%. We find that the Id. DR before us was not able to provide any other contrary decision before us. Hence, we do not find any infirmity in the order of the Id. CIT(A) and accordingly, the grounds raised by the revenue are dismissed.

3.3. At the cost of repetition, the decision rendered for A.Y.2007-08 would apply with equal force for A.Y.2008-09 also except with variance in figures.

**4. In the result, both the appeals of the revenue are dismissed.**

Order pronounced on 06/10/2020 by way of proper mentioning in the notice board.

**Sd/-**  
**(JUSTICE P P BHATT)**  
**PRESIDENT**

Mumbai; Dated 06/10/2020  
KARUNA, *sr.ps*

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

**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.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai

