

**IN THE INCOME TAX APPELLATE TRIBUNAL "B"  
BENCH, MUMBAI**

**BEFORE SHRI C. N. PRASAD, JM &  
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 5600/Mum/2018  
(निर्धारणवर्ष / Assessment Year: 2009-10)

Mr. Navin Jechand Doshi, D-705, Kalp Nagri, Balrajeshwar Road, Mulund West, Mumbai-400 080	<b>बनाम/ Vs.</b>	The Dy. Commissioner of Income Tax, Circle 23(3), C/10, 4 <sup>th</sup> floor, Pratyakshkar Bhavan, Bandra Kurla Complex, Bandra East, Mumbai.
स्थायीलेखासं ./जीआइआरसं ./PAN No. ADDPD0288P		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Vimal Punamiya, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Ms. Kavita P. Kaushik, DR

सुनवाईकीतारीख/ Date of Hearing	:	20.10.2020
घोषणाकीतारीख / Date of Pronouncement	:	04.11.2020

आदेश / ORDER

**PER S. RIFAUR RAHMAN (ACCOUNTANTMEMBER):**

The present appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-40, in short 'Ld. CIT(A)', Mumbai, dated 25.07.18 for AY 2009-10.

2. The brief facts of the case are that assessee is engaged in the business as wholesale dealer in Iron & Steel. The return was originally filed on 25.09.2009 declaring total income of Rs. 3,41,030/-. The same was processed u/s 143(1) of the Act. On information from Sales Tax Department, a search and seizure action was taken in premises of assessee and its group concern and it was alleged that assessee is indulged in bogus purchases. Accordingly, assessment was reopened by issuing notice u/s 148 of the Act. Thereafter, AO made addition on account of bogus purchases to the assessee.

3. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the submission of assessee, restricted the addition 12.5% by relying on the various judgments. Accordingly, Ld. CIT(A) partly allowed the appeal of the assessee.

4. Now before us, the assessee is in appeal challenging the order of Ld. CIT(A) on the grounds mentioned below:-

*1. On the facts and circumstances of the case and in law the Ld CIT(A) erred in confirming the initiation of the reassessment proceeding under section 147.*

2. *On the facts and circumstances of the case and in law the Ld CIT(A) failed to consider that reassessment proceeding cannot be initiated.*

a) *No reassessment can be made just to make an enquiry or verification.*

b) *Reassessment proceeding cannot be initiate merely on the information received from investigation wing.*

c) *Reassessment proceeding cannot be initiated when the LD. CIT(A) have reason to suspect and not reason to believe.*

3. *On the facts and circumstances of case and law the Ld CIT(A) erred in confirming the assessment order under section 143 sub section 3 r w s 147 of income tax Act which is passed against the principal of natural justice.*

4. *The Ld CIT(A) erred in confirming and treating Rs.53,35,529/- being 12.5 percent of the total purchases of Rs.4,26,84,231/- as bogus non-genuine expenditure and thereby erred in confirming the addition to the total income of the assessee.*

5. *The Ld CIT(A) erred in confirming the addition and treating Rs.5,82,195/- as disclosed income of the assessee in view of section 68 of the Income Tax Act,*

*1961 for introduction of new capital allegedly from unknown sources, without giving a fair opportunity of being heard to your appellant and disregarding the explanation made.*

*6. The Ld. CIT(A) erred in confirming the charging of interest under section 234A, 234B 234C and 234D of the Income Tax Act 1961.*

*7. The Ld. CIT(A) erred in confirming the initiation of the penalty proceeding under section 271(l)(c) of the Income Tax Act 1961.*

*8. The Assessee craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.*

5. At the outset, Ld. AR appearing on behalf of the assessee submitted before us that assessee is not pressing Ground No. 1 to 3. With regard to ground no. 4 on account of bogus purchase, Ld. AR submitted that this ground is squarely covered by the consolidated order of Coordinate Bench of Hon'ble ITAT in ITA 2606, 2605 & 2604/Mum/2016 for AY 2008-09 to 2011-12 in assessee's own case, wherein Hon'ble ITAT has restricted the addition on bogus purchase @ 2%.

6. On the other hand, Ld. DR relied on the orders passed by revenue authorities, however he conceded that this ground is covered by the order of ITAT.

7. Considered the rival submission and material placed on record. We notice from the records that the identical ground raised in the present appeal has already been decided by the Coordinate Bench of ITAT in ITA No. 2606, 2605 & 2604/Mum/2016 for AY 2008-09 to 2011-12 in assessee's own case on merits. For the sake of clarity, which is reproduced below:-

*4. After careful consideration, we are of the considered opinion there could be no sale without actual purchase of material keeping in view the assessee's nature of business. Undisputedly the assessee was in possession of primary purchase documents and the payments to the suppliers were through banking channels. The sales turnover achieved by the assessee has not been disputed by the revenue. The books of accounts were subject to audit. However, at the same time, the assessee miserably failed to substantiate the purchases and could not produce any of the suppliers to confirm the transactions and field inquiries indicated that none*

*of the suppliers was existing at the given addresses. Therefore, the onus casted upon assessee, in this regard, remained undischarged. Hence, on the given facts and circumstances, the additions which could be sustained, would be 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 market and undue benefit of VAT against such bogus purchases, which learned CIT(A) has rightly done. However, keeping in view the fact that the assessee was dealing in thin margin item like iron & steel and the assessee reflected Gross Profit Rate of 3.27%, we estimate the additions @2% of alleged bogus purchases of Rs.2,18,12,572/- which comes to Rs.4,36,251/-. The impugned order stand modified to that extent. Resultantly, the appeal stands partly allowed.*

*5. Facts are pari-materia the same in AYs 2010-11 & 2011-12 wherein the assessee was saddled with additions of Rs.313.73 Lacs & Rs.254.61 Lacs respectively. The additions were restricted by first appellate authority to 12.5% of alleged bogus purchases, against which the assessee is in further appeal before us with similar grounds of appeal. Keeping in line with estimation made by us for AY 2008-09, we restrict the additions to 2% of alleged*

*bogus purchases which comes to Rs.6,27,465/- for AY 2010-11 and Rs.5,09,235/- for AY 2011-12. Both these appeal stands partly allowed.*

*6. In the result, all the three appeals stand partly allowed to the extent indicated in the order*

8. Therefore, respectfully following the above decision of Coordinate Bench in assessee's own case which is applicable *mutatis mutandis* in the present case, we are inclined to restrict the disallowance @ 2% of alleged purchases. Therefore, we direct the AO to restrict the disallowance @ 2% of the alleged bogus purchases. Accordingly, we **partly allow** the ground raised by the assessee.

9. With regard to Ground No. 5 on account of addition u/s 68 of the Act on undisclosed income, Ld. AR submitted that assessee is in business for last several years. The addition of capital of Rs. 5,82,195/- was out of the past savings of the assessee. He further submitted that the funds were arranged from family members in order to arrange funds for medical requirement and treatment of his ailing wife and the same is introduced as capital during the year. Therefore, the above

addition made by the Ld. CIT(A) is not justified and same is required to be deleted.

10. On the other hand, Ld. DR relied on the orders passed by revenue authorities.

11. Considered the rival submission and material placed on record. We notice from the records that assessee has introduced the capital in the firm and not disclosed the proper source. It is fact that assessee is in the business for so many years. But the funds were not deposited in the bank, but introduced in the business. It is the duty of the assessee to disclose the proper source. The profit declared by the assessee is also not considerable to support the contention of the assessee. If it is private source from family or friends, it should be properly disclosed. Since, no documentary evidence or any confirmations were filed before us, it is possible that assessee might have certain private savings. Therefore, we are inclined to allow 50% of the capital introduced by him as genuine. Accordingly, ground raised by assessee is **partly allowed**.

12. With regard to Ground no. 6, it is consequential and accordingly, it is **dismissed**.

13. With regard to Ground no. 7, initiation of penalty proceedings and challenging them at this stage is premature. Therefore, this ground of appeal is **dismissed**.

14. In the net result, the appeal filed by the assessee stands **partly allowed**.

*Order pronounced in the open court on 04.11.2020.*

*Sd/-*

(C. N. Prasad)

न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated :

*Sr.PS. Dhananjay*

*Sd/-*

(S. Rifaur Rahman)

लेखासदस्य / Accountant Member

04.11.2020

**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/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**