

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 4590 & 4591/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2007-08 & 2008-09)

ITO-19(2)(5), R. No. 207, 2 nd floor, Matru Mandir, Tardeo Road, Mumbai-400 007	बनाम/ Vs.	M/s Princess Diam 16, Popular Arcade, Tata RPAD No. 1, Opera House, Mumbai-400 004
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAFFP0673F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Sanjay J. Sethi, DR
प्रत्यर्थीकीओरसे/ Respondentby	:	None
सुनवाईकीतारीख/ Date of Hearing	:	12.01.2021
घोषणाकीतारीख / Date of Pronouncement	:	18.01.2021

आदेश / ORDER

Per S. Rifaur Rahman, Accountant Member:

The present Appeal has been filed by the revenue against the order of Ld. Commissioner of Income Tax (Appeals) - 6 in short referred as ‘Ld. CIT(A)’, Mumbai, dated 15.04.19 & 18.04.19 for Assessment Year (in short AY) 2007-08 & 2008-09 respectively.

2. At the outset, it is noticed that none appeared on behalf of assessee in spite of calls and even no application for adjournment was moved. On the other hand, Ld. DR is present in the court and is ready with arguments. Therefore, we have decided to proceed with the hearing of the case ex-parte with the assistance of the Ld. DR and the material placed on record.

3. Since the issues raised in both the appeals are identical, therefore, for the sake of convenience, both appeals are clubbed, heard and disposed off by this consolidated order. First of all, we are taking ITA No. 4590/Mum/2019 for Assessment Year 2007-08.

4. The brief facts of the case are, assessee is engaged in the business of trading and exporting of diamonds. Assessee filed its return of income for the year under consideration on 07.09.2007 declaring total income at Rs. 7,39,820/-. The return was processed u/s 143(1) of the Act. Later on, based on the information received from the DGIT(Inv) and Maharashtra Sales Tax Department about the accommodation entries obtained by the assessee, assessment was reopened u/s 147 of the Act.

Subsequently, assessment was completed u/s 143(3) r.w.s 147 of the Act by the AO thereby making addition of 8% on account of bogus purchases.

5. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the submission of assessee, Ld. CIT(A) agreed with the AO that this purchases were not genuine and does not mean that purchases made from these parties are genuine. The courts have held that payment made by cheque itself is not sacrosanct so as to prove the genuineness of the purchases when the surrounding circumstances are suspect. However, the assessee has shown onwards sales which has not been doubted by the AO. By relying on various case law, he reduced the disallowance @ 3% of bogus purchases and partly allowed the appeal of the assessee.

6. Now before us, the revenue has preferred appeal by raising the grounds of appeal as under:-

1. "Whether on the facts And in the circumstances of the case and in law, the Ld.CIT(A) was justified in restricting the addition @ 3% as against 8% made by

AO on bogus purchases despite the fact that the addition was made on the basis of credible information received from DGIT (Inv) based on information supplied from Sales-tax Authorities?"

2. The appellant prays that the order of the Ld.CIT(A) on the above ground be set aside and that of the A.O. be restored".

3. The appellant craves leave to amend or alter any grounds which may be necessary".

7. Considered the submission of Ld. DR and material placed on record. We are of the considered view that no doubt the purchases made from the suspected parties are not genuine. However, the purchases itself cannot be doubted as rightly adjudicated by Ld. CIT(A) that AO has not doubted sales declared by the assessee, only he suspects the purchases. By respectfully following the decision of Hon'ble Gujrat High Court in the case of **CIT vrs. Smith P. Sheth 356 ITR 451 (Guj)** and we notice that Ld. CIT(A) has considered the guidelines given by the task force of the Ministry of Commerce and Industry. As per which, in the line of business of the assessee, it is prescribed at 1-3%. Ld. CIT(A) has adopted the highest rate i.e. 3%. Hence, we

are inclined to agree with the findings of Ld. CIT(A). Therefore, grounds raised by the revenue are **dismissed**.

8. Since the other appeal filed by the revenue for Assessment Year 2008-09 is similar to the appeal for Assessment Year 2007-08, therefore we also dismiss the grounds raised by the revenue in this appeal for the parity of reasons.

7. In the net result, both the appeals filed by the revenue stands **dismissed**.

Orders pronounced in the open court on 18.01.2021.

<i>Sd/-</i> (Vikas Awasthy) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 18.01.2021
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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**