

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos. 4165/Mum/2019

(A.Y: 2009-10)

ACIT CC – 9(3)(1) Room No. 215, 2 nd Floor, Ayakar Bhawan M.K. Road, Mumbai – 400020.	बनाम/ Vs.	M/s. Devu Tools Pvt Ltd., A/44, 2 nd Floor, Nadjyoth Industrial Estate, Kurla Andheri Road, Safed Pool Mumbai – 400072.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACD8770H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Sajit V. Nair, Sr. DR
प्रत्यर्थी की ओर से/Respondent by :	Shri Mukund Bakshi, AR

सुनवाई की तारीख / Date of Hearing	21/01/2021
घोषणा की तारीख /Date of Pronouncement	02/02/2021

आदेश / ORDER

PER PAVAN KUMAR GADALE:

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals) - 16, Mumbai, passed u/s. 147 r.w.s 143(3) and 250 of the Income Tax Act, 1961. The revenue has raised the following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition of Rs. 5,21,52,147/- to 52,15,215/- as estimate on profit on the bogus purchase.

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2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the Managing Director has admitted to the fact that the assessee is involved in taking accommodation entries for bogus purchases.*

3. *On the facts and in the circumstances of the case and in law, the Hon'ble Ld. CIT(A) has erred in deleting the disallowance made by the AO overlooking the explicit finding of the investigation carried out by the Sales Tax Department and corroborated by the enquiries of the AO.*

4. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

2. The Brief facts of the case are that, the assessee company is engaged in the business of manufacturing and exporting of moulds and dyes. The assessee company has filed the Return of income for the A.Y 2009-10 on 30.09.2009 with total income of Rs.3,93,67,970/- and the assessment was completed u/s 143(3) of the Act on 17.07.2011. Subsequently, the reassessment proceedings u/s 147 of the Act are initiated and the notice u/s 148 of the Act was issued along with the reasons for reopening of assessment were served on the assessee. As per the information with the A.O., the assessee has obtained bogus purchase bills from hawala operators who are engaged in business of providing

accommodation entries without actually supplying the goods. Therefore, the A.O. has reason to believe that there is an income escapement assessment due to bogus bills transactions. In response to notice issued, the assessee has filed a letter on 02.06.2014 to treat the return of income filed on 30.09.2009 as a compliance to the notice u/s 148 of the Act. Subsequently the notice u/s 143(2) and 142(1) of the Act along with questionnaire were issued calling for various details. In compliance the Ld. AR of the assessee appeared from time to time and the case was discussed. The A.O found that, the assessee has obtained bogus purchase bills amounting to Rs. 5,21,52,147/- from nine parties and issued show cause notices on the parties. Whereas, the information submitted by the parties were not complete with respect to the genuineness of purchase transactions. Considering the overall material facts and information filed and the statement recorded, the A.O found that the onus lies on the assessee to prove the genuineness of purchases. Finally, the A.O considered the facts of bogus purchases bills and is of the view that the

parties referred in the website of Maharashtra Sales Tax Department are hawala operators, therefore made an addition along with other additions and assessed the total income of Rs. 9,18,80,807/- and passed the order u/s 143(3) r.w.s 147 dated 26.11.2016.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). The Ld. CIT(A) considered the submissions and grounds of appeal of the assessee and finding of the A.O and relied on the judicial decisions referred in his order and has restricted the addition relying on the assessee's own case for A.Y 2008-09 @ 10% of the purchases and partly allowed the assessee's appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal with the Hon'ble Tribunal.

4. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in granting the relief to the assessee by restricting the disallowance, irrespective of the fact that the A.O has made a thorough verification of the facts and the statement of the managing director was recorded. The CIT(A) has

overlooked the findings of the investigation wing of the sales tax department and prayed for restoration of the A.O order.

5. Contra, the Ld. AR supported the order of the Ld.CIT(A) and relied on the assessee's own case for the earlier assessment year and filed the copy of the ITAT order and prayed for dismissal of the Revenue Appeal.

6. We heard the rival submissions and perused the material on record. The only disputed issue alleged by the revenue that the Ld.CIT(A) has restricted the addition of disallowance of bogus purchases to the extent of 10%. We find as envisaged by the Ld. AR, the Coordinate Bench of the Hon'ble Tribunal in assessee's own case for the A.Y 2008-09 in ITA No. 3088/Mum/2015 dated 17.02.2017 at page 5 para 5 of the order has observed as under:

"5. We have heard rival contentions and gone through the facts and circumstances of the case. Before us, the leaned Counsel for the assessee filed a comparative statement of cross profit and net profit ratio for many years which is as under: -

Comparative statement of gross profit and net profit ratios

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<i>Income Turnover</i>	<i>2008</i>	<i>2007</i>	<i>2006</i>	<i>2005</i>	<i>2004</i>
<i>Sales</i>	<i>81,470,952</i>	<i>103,613,890</i>	<i>44,470,801</i>	<i>64,956,690</i>	<i>65,574,370</i>
<i>Income/</i>	<i>39,201,816</i>	<i>1,667,781</i>	<i>25,923,445</i>	<i>13,613,129</i>	<i>72,276,896</i>
<i>Decreases in Stock</i>					
<i>Gross Profit Turnover</i>					
<i>Bogus purchases allowed</i>	<i>52.20%</i>	<i>48.48%</i>	<i>51.94%</i>	<i>35.52%</i>	<i>40.98%</i>
<i>As expenses</i>					
<i>Net Profit/Turnover</i>					
<i>Bogus purchases allowed</i>	<i>5.36%</i>	<i>5.83%</i>	<i>4.27%</i>	<i>3.90%</i>	<i>9.85%</i>
<i>expenses</i>					

The learned Counsel for the assessee fairly agreed that a reasonable estimate of profit should be estimated in view of the fact that neither manufacturing of moulds nor sale of moulds is under dispute. According to us, assessee had made purchase but from grey market. We find that the similar finding were given by the CIT(A) that assessee might have purchased extra profit on account of saving of sales tax and other tax. Even by purchasing from grey market, assessee might have save some profits and profit of the assessee has depicted in the above chart which is minimum at the rate of 3.90% and maximum of 9.85%. We are of the view that a reasonable estimate on profit rate at 10% will suffice the issue. Accordingly, we direct the AO to estimate the profit rate @ 10% on the above purchases and appeal of the assessee is partly allowed and that of the Revenue is dismissed.

7. We find the facts and the issues in the present case are similar to the earlier years and follow the judicial precedence and observe that the Ld.CIT(A) has granted the relief by restricting the addition to 10% of the bogus purchases relying on the assessee's

own case for earlier years and passed a speaking order. Further the Ld.DR of the revenue could not controvert the findings of the CIT(A) with any new cogent evidence or information Accordingly we are not inclined to interfere with the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 02.02.2021.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai, Dated 02.02.2021

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

KRK, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

ITA Nos. 4165 /Mum/2019
M/s. Devu tools Pvt Ltd., Mumbai.

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आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

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