

आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No. 4654/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2008-09)

M/s. Hemdev Reality Private Ltd 205, Queen Place Water Field Road, Bandra (W) Mumbai-400 050.	बनाम/ Vs.	ACIT-Ward-12(2)2 Aaykar Bhavan Mumbai-400 020
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AABCH-1615-A		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Hari Raheja-Ld.ARs
Revenue by	:	Shri Gurbinder Singh-Ld.Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	04/03/2021
घोषणा की तारीख / Date of Pronouncement	:	04/03/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2008-09 contest the order of Ld. Commissioner of Income-Tax (Appeals)-20, Mumbai, [in short referred to as ‘CIT(A)’], Appeal No.CIT(A)-20/IT-10328/2016-17 dated 14/05/2019 *qua* confirmation of certain additions of Rs.33.31 Lacs on account of *alleged bogus purchases*.
2. The Ld. AR, drawing attention to paper book, submitted that Ld. AO made impugned addition without any basis. The purchases were backed

by purchase invoices and the payments were through banking channels. The supporting documents in the shape of purchase invoices, purchase register, ledger extracts, sales register, bank statement etc. has been placed before us. In the alternative, Ld. AR pleaded to restrict the additions to some reasonable extent as done in numerous orders of various benches of the Tribunal under similar circumstances. The Ld. DR, on the other hand, drew attention to the fact that these documents were not placed before lower authorities and the impugned order is an ex-parte order.

3. We have carefully heard the rival submissions and gone through the documents placed before us. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

4. The material facts are that the assessee being resident corporate assessee stated to be engaged in construction and trading of diamonds was assessed for the year under consideration on *best-judgment basis* u/s 144 r.w.s. 147 of the Act. The original assessment was framed u/s 143(3). However, the case was reopened pursuant to receipt of certain information from DG (Investigation) that the assessee procured bogus purchase bills aggregating to Rs.33.31 Lacs from two tainted parties belonging to Shri Rajendra Jain group as detailed in the assessment order. Notices issued u/s 133(6) to confirm the transactions did not elicit any satisfactory response. In the absence of any satisfactory response forthcoming from assessee to establish the genuineness of the purchases, these were added back to assessee's income.

5. Though the assessee preferred further appeal before Ld. CIT(A), however, it failed to defend the purchases so made which resulted into

confirmation of action of Ld. AO. Aggrieved, the assessee is in further appeal before us.

6. Upon due consideration, we find that there could be no sale without actual purchase of material. The goods procured by the assessee from these two dealers has subsequently been exported as could be borne out of the documents placed before us. The assessee was in possession of purchase invoices and the payments to suppliers were through banking channels. At the same time, the assessee failed to discharge the primary onus of proving the genuineness of the purchases. Therefore, it is a fit case to estimate the additions on such purchases. To put an end to litigation, we estimate the additions against tainted purchases @10%. Accordingly, the impugned additions stands restricted to Rs.3,33,195/- whereas the balance addition stand deleted. No other effective points have been urged before us.

7. The appeal stand partly allowed to the extent indicated in the order.

Order pronounced in the open court on 04th March, 2021.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / **Vice President**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04/03/2021

Sr.PS, Jaisy Varghese

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/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.