

**आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में।**

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
BEFORE SRI MAHAVIR SINGH, VP AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 6878/Mum/2019

(निर्धारण वर्ष / Assessment Years 2009-10)

The Asst. Commissioner of Income Tax-24(2), Room No.601, Piramal Chambers, Jeejeebhoy Lane, Lalbaug, Parel, Mumbai	बनाम/ Vs.	Shri Deepak Navin Shah A/103, Sanjay Building No.5, Mittal Estate, Andheri-Kurla Road, Andheri (E), Mumbai-400 059
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAKPS9564M		

अपीलार्थी की ओर से/ Appellant by	:	Shri Rajendra Josh, SR. DR
प्रत्यर्थी की ओर से/ Respondent by	:	None

सुनवाई की तारीख / Date of hearing:	25.05.2021
घोषणा की तारीख / Date of pronouncement:	14.06.2021

**आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष /

**PER MAHAVIR SINGH, VP:**

This appeal of Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-36, Mumbai, [in short CIT(A)], in appeal No. CIT(A)-36/IT-481 & 482/ACIT-24(1)/2016-17 for AY 2009-10 dated 29.08.2019. The



assessment was framed by the Asst. Commissioner of Income Tax (in short ACIT/ITO/ AO), Circle-24(1), Mumbai for the A.Y. 2009-10 vide dated 28.12.2016 under section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) restricting the addition made by the Assessing Officer by applying the profit rate at 5% of the bogus purchase. For this assessee has raised following ground: -

*"1. Whether on the facts and circumstances of the case, and in law, the Ld. CIT(A) erred in restricting the addition at 5% as against 7% made by the Assessing Officer, pertaining to the unaccounted sales, without appreciating the fact that the information was received from Central Excise Department that the assessee has made unaccounted sale of ₹2,90,57,030/- and the assessing officer has opted 7% as the net profit on the unaccounted sales, which is offered by the assessee as net profit for the AY 2009-10."*

3. Briefly stated facts are that the assessee engaged in the business of manufacturing of chairs, tables and other furniture. The AO has been informed vide letter bearing No. DDIT



(Inv)U4(4)/REIC/2015-16 dated 04.03.2016 received from Deputy Director Central Excise DGCEI Zonal Unit, Mumbai regarding the search was carried out and found incriminating materials. It was found that the assessee having a sister concern M/s. Amardeep Design situated at Roorkee and was enjoying the benefit of area based from payment of central excise duty. The Assessing Officer found that the assessee has accepted the hidden undisclosed sale of ₹2,90,57,030/-. For this, Assessing Officer added 7% of net profit to the income of the assessee. Aggrieved assessee preferred the appeal before CIT(A), who restricted the same to 5% of undisclosed income by observing in Para 4 as under: -

*"4.1.1 The ground of appeal numbers 1 to 7 relate to the addition of ₹ 8,79,164/- being 7% of ₹ 1,25,59,483/- made by the AO on estimation basis. I have carefully considered the submissions of the appellant as well as the findings of the AO in his assessment order and find no infirmity in the decision taken by the AO. The assessee has accepted in Pan 7 of the Assessment Order for AY 2010-11 dated 28/12/2016 that it had hidden undisclosed sales of 1,25,59,483/- which was declared before the Central Excise Authorities confessing that there was no*

*manufacturing activity at Roorkee Unit but all manufacturing was being carried out at the Daman Unit. A declaration of undisclosed sales to the Excise Authorities will have a mandatory effect in the Assessment proceedings of the assessee in Income Tax as a corresponding and identical amount would have remained undeclared. To this extent the action of the AO is without fault.*

*4.1.2 The appellant during the course of appellate proceedings submitted Audited books and a chart showing average Net profit ratio of 2.87% for the 5 years preceding the relevant AY. It has also been submitted by the appellant that the industry average varies between Net profit ratio of 2.5% to 4 %. Hence, considering the submissions of the appellant in the interest of justice and fair play, while protecting the interest of revenue, it would be reasonable if the NP ratio is taken at 5%. The AO is therefore directed to allow the NP ratio at 5%. Hence, the Ground of appeal is Partly allowed."*



4. We have considered the issue and gone through the facts and circumstances of the case. We find that the CIT(A) has rightly applied the profit rate at the rate of 5% and we find no infirmity in the order of the CIT(A), hence, the appeal of Revenue's is dismissed.

**5. In the Result, the appeal of the Revenue is dismissed.**

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)  
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)  
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated. 14.06.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(व. निजी सचिव /SR. PS)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai