

आयकर अपीलीय अधिकरण “C” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम. बालगणेश, लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VP AND SRI M. BALAGANESH, AM

आयकर अपील सं./ ITA No. 6258/Mum/2019
(निर्धारण वर्ष / Assessment Year 2009-10)

आयकर अपील सं./ ITA No. 6259/Mum/2019
(निर्धारण वर्ष / Assessment Year 2013-14)

The Dy. Commissioner of Income Tax Circle-10(3)(2), 2 nd Floor, Room No. 509, Aayakar Bhawan, M.K. Road, Churchgate, Mumbai-20	Vs.	M/s Priority Jewels Pvt. Ltd. 7 Plot No. 121, Street No. 15/18, MIDC, Marol, Andheri (East), Mumbai-400 093
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAACP4118K		

अपीलार्थी की ओर से / Appellant by	:	Ms. Shreekala Pardeshi, DR
प्रत्यर्थी की ओर से / Respondent by	:	None

सुनवाई की तारीख / Date of hearing:	17.06.2021
घोषणा की तारीख / Date of pronouncement :	31.08.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /
PER MAHAVIR SINGH, VP:

These appeals filed the Revenue are arising out of the orders of Commissioner of Income Tax (Appeals)-17, Mumbai [in short CIT(A)], in Appeal Nos. CIT(A)-17/IT-566/10538/16-17, CIT(A) - 17/IT-409/10534/16-17 vide even date 19.07.2019. The Assessments were framed by the Dy. Commissioner of Income Tax, Circle 10(3)(2), Mumbai (in short 'DCIT/ AO') for the A.Ys. 2009-10 & 2013-14 vide order dated 16.03.2016 & 18.03.2016 under section 143(3)(ii) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The only common issue in these two appeals of Revenue is against the order of CIT(A) restricting the disallowance of addition made on account of bogus purchases by estimating the profit rate of 12.5%. The issue is common in both the years and facts are identical, hence, we will take the facts and grounds from Assessment Year 2009-10 and will decide the issue. For this, Revenue has raised the following two grounds: -

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the disallowance made on account of bogus purchase for ₹7,02,290/- by the Assessing Officer, at ₹5,48,665/- being 12.5% of bogus purchases.

2. On the facts and circumstances of the case and in law, whether the Ld. CIT(A) is correct in not following the ratio of the decision of the Apex Court on the issue of bogus purchases in the case of N.K. Proteins Ltd. Vs. DCIT (2017) 84 taxmann.com 195 (SC), dated 16.01.2017 wherein it has been held that the addition on the basis of undisclosed income could not be restricted to certain percentage when entire transaction was found bogus.”

3. We have heard learned DR and gone through the facts and circumstances of the case. We noted from the assessment order that assessee has obtained bogus bills from one Daksh Diamond (Proprietor – Ritesh S. Siroya) from whom the bogus bills to the extent of ₹43,89,320/- was obtained. The Assessing Officer estimated the profit rate at 16% and thereby estimated the addition at ₹7,02,290/- by observing as under:-



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“The assessee company has been showing varying Gross Profit(s) for the preceding two years and post two years ranging from 12% to 16%. A comparison of the Gross Profit(s), of similar business have also been analyzed and it is decided to adopt 16% as the Gross Profit in respect of the above transaction which works to ₹7,02,290/- which is 16% of ₹43,89,320/-; the amount shown as ‘purchases’.

The income of the assessee company is computed accordingly by addition the amount of ₹7,02,290/- as concealed income to the income determined under Section 143(3) of the Income Tax Act, 1961 30.08.2011 at ₹3,66,20,300/-.”

4. Aggrieved, assessee preferred the appeal before CIT(A), who restricted the profit rate at 12.5% by observing in Para 4.4 as under:-

“4.4 In view of the above discussion it is seen that the assessee is unable to substantiate its purchases from the claimed suppliers who has already been established as hawala dealers by the Investigation wing of the Income Tax Department. The suppliers were neither produced during the assessment proceedings nor during appellate proceedings when opportunity was so provided. Hence, the book value shown by the assessee company cannot be relied and deserves to be rejected. Here the purchases has not been questioned it is the amount of reasonable profit out of such purchases that needs to be estimated. Various courts have held that in case of accommodation entry taken from suspicious dealers the appellant gets extra benefit in terms of VAT taxes, transportation etc. Thus, the estimated disallowance made by the AO is legally



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tenable. The AO after considering the gross profit for the preceding two years and post two years ranging from 12% to 16% has adopted 16% as the GP in case of the above mentioned transaction. However, in identical situation the AO has disallowed 12.5% of the purchases for AY 2010-11, hence for this A.Y 2009-10 also the AO is directed to disallow 12.5% of the alleged purchases (12.5% of 43,89,320/-) i.e. Rs.5,48,665/-. The ground of appeal on this issue is partly allowed.”

5. After hearing the learned Sr. DR, we noted that there is no infirmity in the order of CIT(A), the assessee has substantial proof by producing bills and vouchers of sales and purchases that payment is made by account payee cheque and also stock tally. The only deficiency was transportation receipts were not there and assessee could not produce the party. For this, CIT(A) has rightly restricted the profit rate and we confirm the same.

6. Similar are the facts and circumstances in Assessment Year 2013-14 in ITA No. 6259/Mum/2019, hence, following the same in this year also, we dismiss the appeal of Revenue.

7. In the result, both the appeals of Revenue are dismissed.

Order pronounced in the open court on 31.08.2021.

Sd/-

(एम. बालगणेश / M. BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 31.08.2021.

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



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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//

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