



ITA No.2559/M/2014
Shree Swastik Developers
Assessment Year- 2010-11

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।

**BEFORE SHRI MAHAVIR SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No.2559/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2010-11)

Assistant Commissioner of Income Tax 25(2) Room No. 108, 1 st Floor, Building No. C-11, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (E) Mumbai – 400 051	बनाम/ Vs.	Shree Swastik Developers Sai Shopping S.V. Road Borivali Station Borivali(W) Mumbai - 400 092
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAVFS-8876-P		
(□ पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Naveen Gupta, Ld. DR
Assessee by	:	Keyuri Desai, Ld. AR

सुनवाई की तारीख / Date of Hearing	:	01/05/2017
घोषणा की तारीख / Date of Pronouncement	:	01 /05/2017



आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by revenue for Assessment Year [AY] 2010-11 assails the order of Ld. Commissioner of Income tax (Appeals)-35 [CIT(A)], Mumbai dated 16/01/2014 *qua* restricting certain addition of *bogus purchases* to the extent of 15% as against full disallowance thereof of Rs.1,94,89,015/- made by AO.
2. Briefly stated, the assessee, being resident firm, was assessed u/s 143(3) at Rs.1,94,89,015/- vide Assessing Officer [AO] order dated 27/02/2013 as against returned income of Rs.99,93,848/- *e-filed* by assessee on 05/10/2010 which was later revised to 'Nil' on 10/02/2011 after setting off of brought forward business losses of Rs.83,71,152/-. The assessee was engaged as *builder & Developer*. During assessment proceedings, it was noticed that the assessee reflected purchases of Rs.6,90,91,625/- out of which purchases to the extent of Rs.1,94,89,015/- were made from five suppliers who were listed as accommodation entry provider / bogus supplier as per the information received from the Sales Tax Department, Maharashtra. The notices issued to these parties u/s 133(6) could not be served for want of availability of three parties at the given address and two of parties did not respond to the said notice, despite being served with notice. The assessee, in support of his claims, furnished invoice copies, ledger extract and bank statements and contended that the purchases were genuine. However, after perusing the statement recorded by the Sales



Tax Department from the representative of alleged bogus supplier, AO rejected the claim of the assessee and came to the conclusion that the said purchases represented unexplained expenditure u/s 69C and made the impugned additions.

3. Aggrieved, the assessee contested the addition with partial success before Ld. CIT(A) vide impugned order dated 16/01/2014 wherein it contended that the said purchases were utilized in various projects undertaken by the assessee and the construction work could not be carried out without utilization of raw material and the assessee was in possession of requisite purchase documents and all payments were made through banking channels and therefore, the purchases were genuine. Further, the accounts of the assessee were duly audited u/s 44AB and merely because the supplier did not appear, the purchases could not be treated as non-genuine. Reliance was placed on various judicial pronouncements. Finally, Ld. CIT(A) after considering the factual matrix of the case and perusal of various judicial pronouncement, estimated the impugned additions to 15% of total purchases which came to Rs.29,23,352/- as against Rs.1,94,89,015/- made by the AO.

4. Aggrieved by the stand of Ld. CIT(A), the revenue is in appeal before us. The Ld. Departmental representative assailed the order of Ld. CIT(A) by contending that the onus to prove the purchases beyond doubt squarely lied on the assessee which he has failed to discharge. The assessee could not show actual utilization of material in various projects undertaken by him and merely inflated its cost by booking *bogus purchases* in the books of accounts. Reliance was placed on the



judgment of Hon'ble Gujarat High Court in *N.K.Industries Ltd. Vs. DCIT [ITA Nos. 240 & others of 2003 dated 20/06/2016]*.

4. Per *contra*, the Ld. Counsel for Assessee [AR] placed reliance on the finding of Ld. CIT(A) to contend that the assessee was in possession of all purchase documents and all payments to the suppliers were through banking channels and merely because those parties did not appear before AO, the purchases made by assessee could not be doubted. Further, the magnitude of project work undertaken by assessee could not have been possible without actual consumption of material.

5. We have heard the rival contentions and perused the relevant material on record. After analyzing the various contentions of respective representatives coupled with observation / findings of Ld. CIT(A) and after appreciating factual matrix of the case, we find that the conclusion reached at by the Ld. CIT(A) is a reasonable and fair one in view of the fact that the purchases made by assessee were related to his construction work, the books were audited and the assessee was in possession of requisite purchase documents and all payments were made through banking channels. The Tribunal, invariably, in all such cases, have taken a stand that even if presuming that all purchases were bogus, entire addition thereof was not warranted for particularly when the sales were not in dispute and the addition, if any, which has to be made in all such cases is to account for profit element embedded in such purchase transactions. The case law relied upon by Ld. CIT(A) could not be applied to the instant case as the said case law dealt with a search case where certain incriminating material was found which led to the additions in question. Therefore, we do not find any infirmity in the order



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of Ld. CIT(A) and see no reason to interfere with the same. Hence, by confirming the same, we dismiss revenue's appeal.

6. In nutshell, the revenue's appeal stands dismissed.

Order pronounced in the open court on 01st May, 2017.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 01 .05.2017

Sr.PS:- Thirumalesh

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेश की प्रतिलिपि □ प्रेषित/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 – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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