

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "एच" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI**  
**BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A.No.3293/Mum/2014  
(निर्धारण वर्ष / Assessment Year: 2009-10)

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| Haren B. Shah HUF<br>5 <sup>th</sup> Floor, Gopal Niwas,<br>133, Princess Street,<br>Mumbai - 400002 | <b>बनाम/</b><br>Vs. | Income Tax Officer 14(3)(1)<br>6 <sup>th</sup> Floor, Earnest House,<br>Nariman Point,<br>Mumbai - 400021 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAHH0650K  |                     |   |
| (अपीलार्थी /Appellant)   | ..                  | (प्रत्यर्थी / Respondent)   |

|                |                     |
|----------------|---------------------|
| Assessee by:   | Shri Mandar Vaidya  |
| Department by: | Shri A. N. Sontakke |

सुनवाई की तारीख / Date of Hearing: 02.05.2016  
घोषणा की तारीख /Date of Pronouncement: 10.08.2015

आदेश / ORDER

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 11.03.2014 passed by the Commissioner of Income Tax (Appeals) 25, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y. 2009-10.

2. The assessee has raised the following issue:

“1. The Ld. CIT(A) erred in sustaining the addition on account of alleged bogus purchases to the extent of

*25% of the purchases. The Ld. CIT(A) ought to have confined the same to 4.5% of the said value.*

2. *The Ld. CIT(A) erred in not adopting the methodology adopted by the Ld. A.O. for the subsequent year A.Y.2011-12, which was brought to the notice of the Ld. CIT(A)."*

3. The brief facts of the of the case are that the assessee filed its return of income on 25.01.2010 declaring total income to the tune of Rs.3,25,490/-. A copy of Tax Audit Report u/s.44AB Income Tax Act, 1961 ( in short "the Act") was also filed in Form No.3 CD along with return. The return was processed u/s.143(1). The case was selected for scrutiny through CASS. The notice u/s.143(2) of the Act which was issued on 18.08.2010 and served upon the assessee. The notice u/s.142(1) of the Act was also issued. The assessee carried on the business of Trading in Tools and Alloys Steel under his proprietary concern M/s. Divya Enterprises and has derived income from said business and also some income under the head 'income from other sources'. Some purchase was not verified and expenses were not available, therefore the income of the assessee was assessed to the tune of Rs.75,40,800/-. Feeling aggrieved, the assessee has filed the appeal before CIT(A) and the CIT(A) confirmed the said additions. Hence the assessee filed the present appeal before us.

**ISSUE NO. 1 & 2:-**

4. Issue no.1 and 2 are interconnected, therefore are being taken up together for adjudication. Under these issues the assessee had challenged the confirmation of disallowance on account of purchase to the extent of 25%. Assessing Officer disallowed the purchases made from the M/s. Krish

Corporation to the tune of Rs.13,64,116/- on account of statement of Shri. R.C.Salot proprietor of M/s. Krish Corporation dated 26.12.2011. The Assessing Officer also disallowed the purchases made from M/s. Palak Enterprises, M/s. Nirupam Enterprises and M/s. S.B. Steel Hardware on the ground of that notice issued u/s.133(6) of the Act were issued to these parties and the same were returned unserved. The purchases to the tune of Rs.58,33,204/- was disallowed. On appeal this CIT(A) disallowed the purchase to the extent of 25%. The learned representative of the assessee has argued that the Assessing Officer declined the purchase for three parties to the tune of Rs.58,33,204/- on the basis of Inspector's report that parties were not residing at their given address. Specifically on the report that some parties have shifted their business and or closed their business. It is argued that the assessee has given the relevant documents such as confirmation letters from the parties, the PAN nos. & bank statements reflecting the payments made hence the existence of said parties could not be doubted. It is also argued that the transactions were effected through banking channels but the Assessing Officer did not consider the submission of the assessee, therefore the order of the CIT(A) is wrong against law and facts and order is liable to be set aside. Reliance is placed upon the law settled by the ***Hon'ble Apex Court in the case of Orissa Corporation 159 ITR 78 (SC)***. The learned representative of the department has strongly relied upon the order passed by the CIT(A) in question. In view of the argument advanced by the parties and perusing the record it came into notice that the Assessing Officer rejected the purchases made from M/s.Krish Corporation to the tune of Rs.13,64,116/- on the statement of Shri R.C.Salot proprietor of M/s. Krish

Corporation recorded on 26.12.2011. The order speaks that the addition was made on the basis of statement of Shri R.C.Salot but no opportunity for the cross examination was given to the assessee. In view of the law relied by the learned representative of the assessee mentioned above, it is quite clear that the addition is not justifiable on the basis of the statement of the third party. In this regard we also relied upon the law settled in *Hon'ble Apex Court in the case of Orissa Corporation 159 ITR 78 (SC)*. Other additions was made by the Assessing Officer on account of the letters returned which we were sent to the seller. The contention of the assessee is that the assessee was not given an opportunity to produce the documents such as confirmation letters, bank statement reflecting the payment given to them. It also came to the notice that the transactions were effected through banking channels. In view of the law settled in *Hon'ble Apex Court in the case of Orissa Corporation 159 ITR 78 (SC)*, when these documents were submitted by the assessee then in the said circumstances the Assessing Officer should consider these document in accordance with law or otherwise there should be some material to discredit the said piece of evidence. The payment was made through banking channels. The assessee has also produced the copy of cheques issued for the purchase lies at page 77 to 84 of the paper book and list of supplier and purchaser are lies at page 85 to 92 of the paper book and list of the debtors and creditors are lies at page 93 to 95 of the paper book. Merely issuance of letters u/s.133(6) of the Act does not itself can be reason to discredit the purchases specifically in the circumstances when the assessee was having necessary documents of purchases and the documents of bank transactions. No doubt in view of the said circumstances and in

view of the above mentioned law we are of the view that the addition on account of statement made by Shri. R.C.Salot proprietor of M/s. Krish Corporation without giving an opportunity to cross examination is not justifiable. Therefore, the same is hereby ordered to be set aside and the Assessing Officer is directed to re-assess the above said transactions after giving an opportunity to the assessee and by considering relevant evidence adducible by the assessee. Accordingly the purchase from M/s. Palak Enterprises, M/s. Nirupam Enterprises and M/s. S.B. Steel Hardware is also required to be reassessed in view of the evidence adduced by the assessee in accordance with law. Hence finding on this issue of the CIT(A) is hereby ordered to be set aside and these issues are hereby ordered to be restored to the file of Assessing Officer to re-assess the matter of controversy in view of the observation made above and in accordance with law.

7. In the result the appeal filed by the **assessee is hereby allowed for statistical purpose.**

Order pronounced in the open court on 10<sup>th</sup> August, 2016.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 10<sup>th</sup> August 2016

*MP*

**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** (Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**