

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
ITA No.3723/M/2016 (AY 2009-2010)

DCIT-CC-8(4), 6 th Floor, R.No. 658, Aayakar Bhavan, M.K. Road, Mumbai – 400 020.	बनाम/ Vs.	M/s. Offbeat Developers Pvt Ltd., Phoenix Mills Premises 462, Senapati Bapat Marg, Lower Parel, Mumbai – 400 013.
स्थायी लेखा सं./PAN : AAACO5140L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by :	Mrs. Beena Santosh, DR
प्रत्यर्थी की ओर से/ Respondent by :	Ms. Shloka Shah

सुनवाई की तारीख /Date of Hearing : 24.04.2017

घोषणा की तारीख /Date of Pronouncement : 24.04.2017

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This is the appeal by the revenue against the order of the CIT(A) dated 29.2.2016 for the AY 2009-10. In the grounds, revenue raised the issue relating to the relief granted by the CIT(A) on account of the notional interest and the Commission payments incurred by the assessee in connection with the bogus purchases offered by the assessee during the survey proceedings.

2. Narrating the facts, Ld Counsels for the assessee and the revenue submitted that there was survey action on 5.7.12 on the assessee and discovered the fact of suspicious purchase of material from the suppliers. Assessee offered the same to the revenue and there is no issue relating to the bogus purchases amounting Rs 5.91 cr from 4 suppliers. In the re-assessment u/s 147 r w s 143(3) of the Act, the AO made addition on accounts of the interest expenditure relatable to the said investment in the said purchases and also the estimated commission expenditure of Rs 11,81,832/- 2% of the said Rs 5.51 cr relating to the same. The CIT(A) granted relief in this regard. Aggrieved with the above, the Revenue is in appeal before the Tribunal with the grounds relating to the said commission and interest.

3. Before the Tribunal, Ld DR for the revenue relied heavily on the order of the AO. However, Ld Counsel for the assessee submitted that both additions were made based on either estimations and surmises. Referring to the relief of Rs 41,48,231/- referred to in the ground 1, Ld AR submitted that the total purchases of the assessee is only Rs 4,13,88,841/- and the said sum only should be reduced from the CWIP and not the other figure of Rs 5.91 cr. Connected to the same issue, CIT(A) discussed the issue of disallowance of interest expenditure of Rs 41,14,923/- being interest relatable to the investment in the said bogus purchase of Rs 5.91 cr. The fact of availability of assessee's own interest funds was ignored by the AO. CIT(A) relied on the binding judgment in the case of Reliance Utilities and Power Ltd in the process of granting relief. Nothing adverse judgment is brought to my notice by the Ld DR during the proceedings before the Tribunal. In my view, the finding of the CIT(A) given in para 5.9 and 6.1 to 6.4 of his order are fair and reasonable. Therefore, the said decision of the CIT (A) does not call for any interference. Accordingly, relevant ground 1(mistakenly typed 3) is dismissed.

4. Regarding the other adhoc addition of Rs 11,81,832/- ie 2% of the said Rs 5.51 cr, I find, the AO disallowed the same on estimation basis towards the commission assessee might have incurred in connection with the purchase of bogus materials/supplies. As such, there is no evidence to support the said addition. The contents of para 7.1 to 7.5 (sic) of the CIT (A)'s order are relevant. CIT (A) held it is a case of mere estimation and surmises. I agree with the same. Accordingly, the relevant ground no.2 of the Revenue's appeal is dismissed for want of insufficient evidence and unsustainable addition. Accordingly, ground 2 (numbered as 4) is dismissed,

5. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 24th April, 2017.

Sd/-

(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 24.04.2017
व.नि.स./ OKK, 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.

सत्यापित प्रति //True Copy//

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