

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI RAM LAL NEGI, JUDICIAL MEMBER
ITA No.1506/M/2015 (AY 2009-2010)**

DCIT-15(3)(2), R.No. 451, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-20.	बनाम/ Vs.	Sterling Electro Enterprises Pvt Ltd., 101-106, Exim Link 1 st Floor, Mulund Goregaon Road, Near Nahur Railway Station, Bhandup (W), Mumbai-78.
स्थायी लेखा सं./PAN : AABCS6528H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**C.O. No.175/M/2016 (Arising out of ITA No.1506/M/2015)
(AY 2009-2010)**

Sterling Electro Enterprises Pvt Ltd., 101-106, Exim Link 1 st Floor, Mulund Goregaon Road, Near Nahur Railway Station, Bhandup (W), Mumbai-78.	बनाम/ Vs.	DCIT-15(3)(2), R.No. 451, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai- 20.
स्थायी लेखा सं./PAN : AABCS6528H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by :	Shri Devendra Jain
प्रत्यर्थी की ओर से/ Revenue by :	Dr. A.K. Nayak, DR

सुनवाई की तारीख /Date of Hearing : 18.04.2017

घोषणा की तारीख /Date of Pronouncement : 21.04.2017

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are two appeals under consideration. The captioned appeal ITA No.1506/M/2015 is filed by the Revenue and assessee filed the Cross Objection (CO) No. 175/M/2016 for the assessment year 2009-2010. Since, the issues raised in these appeals are inter-connected, therefore, for the sake of convenience, they are

clubbed, heard combinedly and disposed of in this consolidated order. Appeal wise adjudication is given in the following paras of this order.

Grounds raised by the Revenue in its appeal read as under:-

1. *On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in directing the AO not to treat the bogus purchases as unexplained expenditure u/s 69C of the Act. The Ld CIT (A) has further erred in not appreciating the fact that the said seller parties were found to be Hawala operators / bogus billers.*
2. *Without prejudice to the above, the Ld CIT (A) ought to have made further enquiries himself or directed the AO to make further enquiries and furnish a report in view of the provisions of section 250 of the Act if he was not satisfied regarding the enquiry made by the AO.*
3. *Further, without prejudice to the above, in para 2.5.17 the Ld CIT (A) has observed that the appellant might have purchases materials by way of cash in the open market. In this situation the CIT (A) ought to have applied the provisions of section 40A(3) of the Act.*

Cross Objections raised by the assessee read as under:-

1. *On the facts and in the circumstances of the case and in law, the Ld CIT (A) has erred in retaining addition at the rate of 15% of the alleged purchases merely on surmises & conjectures without appreciating the fact that the utilisation of goods has been proved by the appellant and has also been accepted by the CIT (A) and therefor disallowance cannot be sustained as per the decision of the Hon'ble Bombay High Court in the case of Babulal C Borana Vs. Third ITO (2006) 282 ITR 251 (Bom.) and CIT vs. Nikunj Eximp Enterprises (P) Ltd (2013) 216 Taxman 171 (Bom.).*
2. *Without prejudice to ground no.1, on the facts and in the circumstances of the case and in law, the Ld CIT (A) has erred in arbitrarily estimating the profit at the rate of 15% of the alleged bogus purchases by wrongly relying on the decision of the Gujarat High Court in the case of Sanjay Oilcake Industries vs. CIT (316 ITR 274) disregarding the fact that there were withdrawals by bearer cheque from the accounts of the creditors whereas there is no such finding in the assessee's case."*

2. The only issue raised in the main appeal of the Revenue (ITA No.1506/M/2015) relates to the 'bogus purchases' and 'correctness of addition of 100% of such purchases'. While AO made addition of 100% of such purchases (Rs. 65,80,515/-), the CIT (A) restricted the addition to 15%. Aggrieved with the said relief granted by the CIT (A), the Revenue is in appeal before the Tribunal. On the other hand, assessee filed the CO supporting the order of the CIT (A) and also for complete deletion of entire addition.

3. Before us, Ld Counsel for the assessee submitted that CIT (A) erred in restricting the addition to 15% without following the judgment of the Hon'ble

Gujarat High Court judgment in the case of CIT vs. Simit P Sheth [2013] (356 ITR 451) (Guj.), wherein 12.5% was approved.

4. After hearing both the parties and on perusal of the orders of the Revenue Authorities as well as the cited precedents, we find that the CIT (A)'s order should be amended to be in tune with the said judgment. We order accordingly. As such, there is no case for confirming the entire addition of Rs. 65,80,515/-. Further, we were informed that the assessee paid VAT amount separately to the Sales Tax Department and therefore, the GP of 12.5% should be further reduced by the said VAT %. After hearing the Ld Representatives of both the parties on this issue, we find that this issue needs to revisit the file of the AO for examining the facts and decide the matter afresh. Accordingly we order. AO shall grant a reasonable opportunity of being heard to the assessee as per the set principles of natural justice. Thus, grounds raised by the Revenue and the Cross Objection of the assessee are decided protanto.

5. In the result, appeal of the Revenue and the CO of the assessee are decided protanto.

Order pronounced in the open court on 21st April, 2017.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 21.04.2017
व.नि.स./ OKK, Sr. PS

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

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 अपीलिय अधिकरण, मुंबई / **ITAT, Mumbai**