IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI RAJENDRA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.4491/Mum/2015
(**निर्धारण वर्ष** / Assessment Year: 2011-12)

DCIT,32(2) R.No. 307, 3rd Floor, C-13, Pratakshkar Bhavan, BKC, Bandra, Mumbai-400051	**बनाम**/ Vs.	M/s. N.M Residency Fressia, Gr. Floor, L.M. Road, Navagoan, Dahisar-w, Mumbai-400068
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGFN8352A		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Revenue by:	Shri T. A. Khan (DR)
Assessee by:	Shri Anuj Kisnadwala (AR)

सुनवाई की तारीख / Date of Hearing: 26.03.2018
घोषणा की तारीख /Date of Pronouncement: 04.05.2018

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 03.05.2015 passed by the Commissioner of Income Tax (Appeals) - 44, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2011-12.

2. The revenue has raised the following grounds: -

> *"On the facts and in the circumstances of the, case and in law, the Ld. CIT(A) erred in restricting addition of unexplained expenditure 10 Rs.8,95,708/- (@ 8% of Rs.1,11,96,353/-) u/s 69C of the IT. Act on account of bogus purchases, as against the addition of*

Rs.1,11,96.353/- made by the AG without appreciating that the assessee has not produced any cogent evidence to substantiate the fact that it had taken actual delivery of goods purchased from these parties and that the notices under 133(6) issued to the parties from whom alleged bills were received were returned undelivered by the postal authorities with the remark 'not available at (his address" and the assessee has also failed to produce the parties before the AO,"

On the facts and in the circumstance of the case and in law, the ld. C1T(A) erred in deleting the disallowance made h\ the AO overlooking the statement given by (he patties and explicit finding of the investigation carried out by the Sales Tax Department and corroborated b> the enquiries of the AO."
"The appellant prays that the order of the ld. CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.'
"The appellant craves leave to amend or alter any ground or add a new ground."

3. The brief facts of the case are that the assessee filed its return of income on 21.09.2011 declaring total income to the tune of Rs.1,28,45,040/-. Thereafter, the return was processed u/s 143(1) of the Act. The case was selected for scrutiny under CASS. The appellant firm was engaged in the business of builders and developers. The appellant debited a total purchase to the tune of Rs.1,11,96,353/- from 9 parties. The AO received the information from the Sales Tax Department, Mumbai wherein it was conveyed that the said dealers were providing accommodation entries and were not genuine sellers in the market. The name of the 9 parties are hereby mentioned below: -

Sr. No	Name	Amount(Rs)
1	Darshan Sales Corporation	9,98,180
2	Navdeep Trading Corporation	12,75,415

3	Deep Enterprises	12,03,900
4	Shubham Enterprises	1,93,735
5	Shri Labhimpex	10,65,778
6	Krish Corporation	12,74,711
7	Ambika Sales Corporation	16,44,521
8	Samarth Enterprises	24,92,519
9	Bhavani Trade Link	10,47,594
	Total	1,11,96,353

4. Thereafter, the AO issued the notices to the said parties' u/s 133(6) of the Act but the notices were received unserved. Thereafter, the notice was given to the assessee to substantiate his claim. The assessee furnished the purchase bills from these parties, statement of bank accounts and ledger account reflecting the payment made. The assessee also explained that the payment was made through account payee cheques from the account. The assessee claim to be a genuine purchase but the assessee did not produce the delivery challan, lorry receipt, mode of transport of goods, evidence of payment of freight, stock register etc., for all the purchases from the alleged suppliers. Since the notice was not served to the parties and parties were not produced before the AO and the necessary documents were not roduced, therefore, the AO treated the said purchase as unexplained expenditure u/s 69C of the Act and added to the income of the assessee. Thereafter, the assessee filed an appeal before the CIT(A) who restricted the claim to the extent of 8% of the said bogus purchase, therefore, the revenue has filed the present appeal before us.

5. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. Before going further we deemed it necessary to advert the finding of the CIT(A) on record: -

> *"I have gone through the facts or the case, contention of the AO and submissions of the appellant. It is an undisputed fact that Sales Tax Department did make enquiries regarding genuineness of the parties actually making the sale and it is also a fact that the Sales Tax Department got the statements of those persons stating that they were actually engaged only in providing accommodation entries for a certain commission fee. On his part, the AO has gone into the issue by sending 133(6) notices and making field enquiries, but has not found any concrete evidence to doubt the genuineness of the payments being shown by the appellant through the bank accounts The AO has also definitely not been able to question the availability of the inventory that has been subsequently sold, To that extent, the examination of that aspect has not created any doubt in terms of the purchases. However, as far as the evidence submitted by the appellant is also concerned, the appellant has fled his own books, purchase bills/challans, ledger accounts and its own bank statement to further his argument. The fact that the payments are being made through cheques is not something that is being doubted. In fact, that is the contentious issues that these parties which are Indicated by the Sales Tax Department through a procedure which appears to be technically correct on paper, are in fact engaged in false billing for a fee/commission. The onus of proving the entire transactions to be genuine is definitely on the tax payer, when he is making the claim of purchase and especially in light of the doubt that has been raised by the enquiries conducted by the Sales Tax Department, the onus is even more on the tax payer to show that as far as he is concerned, he has discharged his tax related liabilities in an accurate manner. So therefore, while on one hand the AO may not had a clinching proof but the primary responsibility which is ensued on the tax payer has also not been discharged in terms of establishing the genuineness of the transaction. Merely filing copies of his own ledger accounts and bank accounts does in no way establish that the parties actually existed, but then considering that the books of accounts have not been disputed, sales have not been disputed and neither cheques have been shown to be received back as cash by the appellant, T am of the considered view that In*

> *the context of the situation where the AO has himself said that what is being doubted is not the quantity of purchases per se, which has entered into the books of the appellant, but that the purchases were billed through bogus parties, then the cause of justice would be served by looking at the gross profit margins being declared by the appellant. I am guided by the ratio of decision of the Hon'ble Gujarat High Court in the case of CIT Vs Simit P. Sheth pronounced on 16.1.2013 in tax appeal No.5531 of 2012 wherein the Hon'ble Court have held that when the total sale is accepted by the AO, then the entire purchases cannot be added to the income of the appellant. The Hon'ble Court have, therefore, held that fair profit ratio would be needed to be added back to the income of the assessee. Therefore, 8% of the purchases i.e. 8% of Rs.1,11,96,353/- which works out to of Rs,8,95,708/- is upheld for lack of credible evidence being provided by the appellant to substantiate the purchases. The appellant gets relief of Rs.1,03,00,645/-.”*

6. On appraisal of the above said finding, we noticed that in the instant case the addition was raised on account of bogus purchases from 9 parties mentioned above upon the information of Sales Tax Department u/s 69C of the Act. The notice u/s 133(6) were issued which were not served. Upon the asking, the assessee failed to produce the parties and necessary document related to delivery of material such as delivery challan, lorry receipt, mode of transport of goods, evidence of payment of freight, stock register etc. The sale is not in dispute in this case the Department has admitted the sale the matter of controversy has been decided by the CIT(A) on the basis of decision of **CIT Vs. Simit P. Sheth.** Accordingly, it is specifically held that when the sale is accepted then the entire purchases cannot be added to the income of the appellant. The court has also held that the fair profit ratio would be needed to be added back to the income of the assessee’s. The CIT(A) took the profit ratio at the 8% of the total purchase to the tune of Rs.1,11,96,353/- and the said profit ratio i.e. to the tune of Rs.8,95,708/-

was added to the income of the assessee. The facts are not distinguishable at this stage also. We nowhere found any irregularity and any illegality in the order passed by the CIT(A) in question. Accordingly, we affirmed the order of the CIT(A) on the said issues and decided these issues in favour of the assessee against the revenue.

7. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 04.05.2018.

Sd/-	Sd/-
(RAJENDRA)	**(AMARJIT SINGH)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 04.05.2018
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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 /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**