

आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

**BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No. 4956/Mum/2015
(निर्धारण वर्ष / Assessment Year:2009-2010)

ANJANI STEEL Plot No. 463, Road No. 4, Steel Market, Kalamboli, Panvel, Distt. Raigad Mumbai	बनाम/ Vs.	INCOME TAX OFFICER Ward -01, 3 rd Floor Trifed Tower Opp. Khada Colony New Panvel 410206
स्थायी लेखा सं./जीआइआर संं . /PAN/GIR No. AAPFA7295Q		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri V.D.Parmar, AR
प्रत्यर्थी की ओर से/Respondent by	:	Shri J.P.Jangid, DR

सुनवाई की तारीख / Date of Hearing	:	03/11/2016
घोषणा की तारीख / Date of Pronouncement	:	18/11/2016

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by the assessee for Assessment Year [AY] 2009-10 assails the order of the Commissioner of Income Tax (Appeals)-2 [CIT(A)], Mumbai dated 23/07/2015

passed u/s 143(3) read with Section 147 of the Income Tax Act, 1961 [hereinafter “the Act”]. The appeal primarily assails the stand of the CIT (A) in upholding the reassessment u/s 147 of the Act on legal grounds as well as on merits.

2. Facts *qua* the dispute are that the assessee filed its return of income for AY 2009-10 declaring a total income of Rs.21,610/- which was processed u/s 143(1) of the Act. The case of the assessee was sought to be reopened upon receipt of information from Sales Tax Department, Maharashtra regarding certain dealers indulging in issuance of bogus purchase bills and assessee being listed as one of the beneficiaries of bogus purchase bills in respect of following dealers:-

Sr. No.	Name of the Party	Maharashtra VAT No.	A.Y.	Amount of bill taken by the assessee
1.	Entech Enterprises	27210604094V	2009-10	10,61,893/-
2.	Shriti Enterprises	27520503189V	2009-10	7,96,802/-
3.	Deep Enterprises	27750595164V	2009-10	10,55,538/-
	TOTAL			26,14,233/-

Therefore, the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act dated 26/03/2013. Detailed information was sought from the assessee by issuing notice u/s 142 (1) of the Act *qua* the purchases made from the alleged bogus dealers. The assessee submitted that it has already paid VAT against purchases made from such dealers. To verify the genuineness of the purchase, notices u/s 133(6) of the Act were sent to the above three parties at the addresses provided by the assessee, out of which two notices were returned back by the postal authority with the remarks “not known”. The third party namely ‘Shriti Enterprises’ categorically denied any transaction with the assessee. The physical inspection by inspector at site of the two parties namely ‘Entech Enterprises’ and ‘Deep Enterprises’ revealed that the two parties did not exist at the given addresses. The assessee expressed its inability to produce the parties but contended that payments to these parties have been made by cheques and the same are genuine. However, after rejecting the contention of the assessee, the AO concluded such purchases to be not genuine but in the nature of accommodation entries only and accordingly added the amount of Rs.26,14,233/- to the income of the assessee

and determined the total income at Rs.26,35,840/- vide order dated 18/03/2014. The assessee contested the same before the CIT(A) unsuccessfully vide order dated 23/07/2015. The CIT(A) after considering the factual matrix of the case upheld the reopening u/s 147 of the Act. He further noted that onus to prove genuineness of the purchases squarely lied on the assessee by furnishing necessary supporting documents like bank statement, confirmation, delivery challans, proper transport receipts etc. and by producing the parties for examination, which assessee has failed to discharge. During the course of appellate proceedings, the assessee was asked to file the requisite details and to produce the parties for examination. But, the assessee failed to do so. No transport / octroi receipts were filed to justify genuineness of the purchases. Further, the purchase bills and delivery challans were blank bills without any marking or signature of the representatives and the assessee failed to produce proper verifiable documents which could prove physical delivery of goods. Mere payment by Account Payee cheques is not sacrosanct and it would not make otherwise non-genuine transaction as genuine. When, the assessee could not produce any supporting documents of the purchases, an adverse inference has to be drawn against the assessee. No quantitative day to day inward & outward stock register was maintained by the assessee and the parties did not exist at the premises the details of which were furnished by the assessee himself. After applying similar other reasoning, CIT (A) confirmed the stand of the AO. Aggrieved, the assessee is in appeal before us.

3. The learned Counsel for the assessee has not contested the reassessment. Therefore, we proceed to decide the matter on merits. The learned Counsel for the assessee [AR] has contested that the AO has not disputed the sales whereas complete quantitative details has been maintained by the assessee. The assessee is dealing in only one item i.e. M.S. Pipes and there is complete reconciliation of quantitative details of this item. In support, he referred to the assessee's paper book *inter-alia* containing stock register, bank statement, copy of invoices along with transport receipts, comparative profitability chart and various audited final statements etc. filed before us. He argued that the books were subjected to tax audit and there was no adverse remark with respect to purchases which are supported by genuine bills giving

full details of the suppliers, supported by delivery challans, transport bills, entries inward etc. and payment were by account payee cheques which were duly reflected in the bank statement. There is complete quantitative detail of purchases and sales, gross profit is comparable to earlier years and thus the purchases are genuine. Reliance has been placed on various judicial pronouncements.

4. The learned DR on the other hand, has contended that the purchases are made from non-existent parties and hence, rightly been treated the same as bogus purchases and added to the income of the assessee.

5. We have heard the rival contentions and perused the materials on record. The only dispute is with regard to the genuineness of the purchases made from three parties. First of all, we note that TIN of the alleged suppliers have been deactivated by the Sales Tax Department, Maharashtra Government details of which are as under:-

Name of the Dealer	Date of cancellation of TIN
Entech Enterprises	25-04-2007
Shriti Enterprises	02-02-2006
Deep Enterprises	09-03-3007

Further, 133(6) notices issued by the AO on the addresses provided by the assessee himself has been returned back in respect of two suppliers and the third supplier has categorically denied having undertaken the said transaction. Even, the physical verification of the actual site by the Inspector revealed that the firms were not functioning at that time in the said premises. The assessee was asked to produce the parties for examination but the assessee failed to do so despite having business relation over several years. Payment through banking channel is not conclusive to prove the genuineness of the purchases rather it is only one of the factors to be considered. Upon confrontation by the bench, AR stated that no 'freight inward' or 'Transport' expenditure has been booked by the assessee in the books of accounts and therefore, no TDS or service tax has been paid thereupon. On perusal of the invoices raised by the alleged bogus suppliers revealed that cartage charges have not been charged in the

invoices. The invoices bear only truck/vehicle numbers but the transporters details are missing from the invoices. The above factors raise a doubt regarding genuineness of the purchases. The Tribunal invariably in all such cases have taken a stand that even if the purchases are found to be bogus, the entire addition thereof cannot be made, particularly when sales are not doubted by the Revenue and found certain percentage of such bogus purchases to be a reasonable addition to be made in such cases. The case laws cited by the learned Counsel for the assessee have been pronounced on the peculiar facts and circumstances of the case which varies from case to case and cannot be applied on a straight jacket formula rather a view has to be taken from a broader angle keeping in view the peculiarity of the facts and circumstances of each case. Therefore, we are of the considered opinion that that even if purchases are found to be bogus, the entire addition thereon cannot be sustained rather addition to the extent of 12.5% of such bogus purchases is reasonable in the present case of the assessee. We hold so and, therefore, restrict the disallowance to the extent of 12.5% of the bogus purchases of Rs.26,14,233/-. Resultantly, appeal of the assessee is partly allowed.

6. In nutshell, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 18th November, 2016

Sd/-
(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Member

मुंबई Mumbai; दिनांक Dated : 18.11.2016

Laxmikant Deka, Sr. PS

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant**

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 – 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

Sr. No.	Details	Date	Initials	Designation
1	Draft dictation sheets are attached	10.11.16		Sr.PS/PS
2	Draft dictated on	10.11.16		Sr.PS/PS
3	Draft Placed before author	11.11.16		Sr.PS/PS
4	Draft proposed & placed before the Second Member			JM/AM
5	Draft discussed/approved by Second Member			JM/AM
6	Approved Draft comes to the Sr.PS/PS	17.11.16		Sr.PS/PS
7	Order pronouncement on	18.11.16		Sr.PS/PS
8	File sent to the Bench Clerk	18.11.16		Sr.PS/PS
9	Date on which the file goes to the Head clerk			
10	Date on which file goes to the AR			
11	Date of Dispatch of order			