

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "सी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE HON'BLE S/SHRI JOGINDER SINGH (JM), AND RAJESH KUMAR,(AM)

आयकर अपील सं./I.T.A. No.5033/Mum/2015

(निर्धारण वर्ष / Assessment Year :2009-10)

Dy. Commissioner of Income Tax-Central Circle-3(3), Room.No.401, 4 th floor, Aayakar Bhavan, M K Road, Mumbai-400020	बनाम/ Vs.	M/s PAG International Pvt Ltd., 60-62 Kika Street, Gulawadi, Mumbai-400004
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./PAN No. :AACCP6936H

अपीलार्थी ओर से / Appellant by:	Written submission by DR
प्रत्यर्थी की ओर से/Respondent by	Shri Ryan Saldanah

सुनवाई की तारीख / Date of Hearing : 6.7.2017

घोषणा की तारीख /Date of Pronouncement : 28.8.2017

आदेश / O R D E R

Per RAJESH KUMAR, Accountant Member:

This is an appeal filed by the revenue and is directed against the order of the Ld. CIT(A)-51, Mumbai dated 30.7.2015 pertaining to A.Y.2009-10.

2. The only issue involved in the appeal is against the deletion of addition by the Id.CIT(A) as made by the AO on account of bogus purchases from M/s Samay Sales Corporation.

3. Facts of the case are the assessee filed return of income on 26.9.2009 declaring total income of Rs.1,30,370/-. The assessment was framed vide order dated 12.12.2011 u/s 143(3) of the Act assessing the total income at Rs.1,77,360/-. Thereafter, the AO received the information from the

Sales Tax Department, Mumbai, that the assessee has made bogus purchases amounting to Rs.68,54,885/- from M/s Samay Sales Corporation which was a hawala party and providing accommodation entries of bogus purchases. Accordingly, the AO issued notice under section 148 of the Act .During the course of assessment proceedings, the assessee was asked to prove the genuineness of the purchases made from M/s Samay Sales Corporation. In response to the explanation called for by the AO, the assessee submitted the copies of bills and vouchers, receipts of VAT paid and details of purchases etc. However, could not produce the confirmation from the said hawala party. Moreover, the notices sent u/s 133(6) of the Act were returned unserved. The AO upon not being convinced with the explanation rendered by the assessee disallowed the entire purchase u/s 69C of the Act by framing the assessment u/s 143(3) r.w.s.147 of the Act vide order dated 21.3.2014 assessing the total income of the assessee at Rs.70,32,250/-.

4. In the appellate proceedings, the Id.CIT(A) allowed the appeal of the assessee by holding that the assessee has duly produced all the relevant documents, duly recorded the transactions in the books of account, furnished stock register, purchase and sales tally register. The Id. CIT(A) also observed that the AO did not doubt the books of accounts and accepted the same and consequently deleted the addition by following his predecessor's order for the assessment year 2010-11 in which the similar addition was altogether deleted. Aggrieved by the order of FAA, the revenue is in appeal before us.

5. We have carefully considered the contentions of the parties and perused the material placed before us including the orders of authorities below. The undisputed facts are that the assessee has availed hawala accommodation entries of bogus purchases of Rs.68,54,885/- from M/s Samay Sales Corporation and could not produce the confirmation before the AO to prove the genuineness of the purchases. Even, the notice sent u/s 133(6) of the Act were returned unserved. In such a circumstances, the plausible presumption is that the assessee might have purchased the material from the gray market thereby making savings of VAT and other relevant taxes. Under such facts , various Benches of the Tribunal have decided and upheld the addition at the rate of 12.5% of the total bogus purchases. Therefore, to maintain consistency with the Tribunal orders, we direct the AO to apply 12.5% GP to cover the leakage of revenue. The AO is directed accordingly.

6. In the result the appeal of the revenue is partly allowed to the extent mentioned above.

The above order was pronounced in the open court on 28th Aug, 2017.

घोषणा खुले न्यायालय में दिनांक: 28th Aug, 2017 को की गई ।

Sd

(JOGINDER SINGH)
Judicial Member

sd

(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai: 28. 8.2017

व.नि.स./ SRL , 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)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

True copy

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai