

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

**BEFORE SHRI AMARJIT SINGH, JM AND SHRI MANOJ KUMAR
AGGARWAL, AM**

आयकर अपील सं/ I.T.A. No.661/Mum/2020

(निर्धारण वर्ष / Assessment Year: 2010-11)

DCIT-1(1)(2) 579, Aayakar Bhavan, M. K. Road, Mumbai-400020.	बनाम/ Vs.	M/s. Futura Infraprojects Ltd. 303, 3 rd Floor, Rajendra Chambers, 19, Nanabhai Lane, Fort, Mumbai-400001.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACF6879R		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Ms. Usha Gaikwad (DR)
Assessee by:	None

सुनवाई की तारीख / Date of Hearing: 14/07/2021

घोषणा की तारीख /Date of Pronouncement: 03/09/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 26.11.2019 passed by the Commissioner of Income Tax (Appeals) -02 Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2010-11.

2. The revenue has raised the following grounds: -

1."On the facts and in the circumstances of the case and in law, the Ld, CIT(A) erred restricting the addition to the extent of 9.44% of the total alleged bogus purchases from hawala dealers added by the A.O by ignoring the fact that the assesses could not produce the parties from whom purchases were made thereby failed to discharge the primary-



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onus to establish genuineness and creditworthiness of the purchase transaction during the course of assessment proceedings"

2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering that the addition was made on the basis of information received from the DIT(Inv) and Sales tax Department, Maharashtra with regard to bogus purchase made by the assessee from dealers without supply of actual goods"*

3. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering that the Hawala dealers have admitted on oath before the Sales Tax Authorities that they have not sold any material to anybody". "*

3. The brief facts of the case are that the assessee filed its return of income on 15.10.2010 declaring a total income to the tune of Rs.11,94,110/-. The assessment was completed on 25.03.2013 determining the total income to the tune of Rs.30,74,690/- in view of the provision u/s 143(3) of the I. T. Act, 1961. The case of the assessee was reopened u/s 147 of the Act on the following reasons.:-

"The assessee is M/s Futura Infraprojects Limited find the relevant assessment year is 2010-11 In this case return of income is filed for A Y. 2010-11 on 15.10.2010 declaring total income at Rs.11,94,110. The assessment in this case was completed vide order u/s 143(3) of the Income Tax Act. 1961 dated 25 03.2013 determining the total income at u/s 30,74,690/-. The assessee company is a Government registered carrying out infrastructural projects for The State Government Departments, Sales Tax Department of State of Maharashtra, in course of their investigation had unearthed a massive scam in which they had found that some dealers were issuing invoices without actual sales /purchase transaction, which is nothing but hawala transaction. Thereafter they had published the list of suspicious Dealers who had



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*issued false bills without delivery of goods in their website
www.fttahctvat.gov in.*

*On verification of record of the assesses company for A.Y. 2010-11 it is
seen that company has made purchases from the five parties which are in
the list of suspicious dealers declared by the Sales Tax Department of
Slate of Maharashtra. These are the following*

<i>Name of Hawala Dealer</i>	<i>TIN.</i>	<i>Amount as per Schedule of Purchases</i>
<i>Karan Enterprises</i>	<i>279301 14236V 27430740355V</i>	<i>3,87,000</i>
<i>Sidhivinayak Enterprises</i>	<i>27280645814V</i>	<i>1, 00, 000</i>
<i>Ceeport Iron & Steel Pvt. ltd</i>	<i>27720732387V</i>	<i>10,18,993</i>
<i>Padmalaxmi Steel and Alloys Pvt Ltd</i>	<i>27880639276V</i>	<i>3.06,185</i>
<i>Avani Corporation</i>	<i>27120711668V</i>	<i>7,00,000</i>
<i>Total</i>		<i>25,12,178</i>

In light of the above, it is dear that the alleged purchase amounting to Rs.25,12,178/- debited in the Profit and loss account of the assesses company are accommodation entries and are bogus. Therefore, the assessee company has itself failed to disclose fully and truly all material facts relevant to the assessment year under consideration. There was failure on the on the pan of the assesses to disclose truly and correct particulars of it's income for A.Y.2010-11.

In view of the above, I have reason to believe that income to the extent mentioned above amounting to Rs. 25,12,178/- has escaped assessment within the meaning of the provisions of section 147 of the Income Tax Act, 1961. Therefore, I am satisfied it is a fit case for issue of notice u/s 148 of the Income Tax Act, 1961"



4. Thereafter, necessary notice u/s 148 of the Act was issued along with reasons. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessment was completed by assessing the income to the tune of Rs.56,88,400/-. The addition of bogus purchase of Rs.25,12,178/- was raised. The assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 9.44%. The revenue was not satisfied, therefore, the revenue has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the Department and have gone through the case filed carefully. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

“4.3 I have considered the AO's order, submissions made by the appellant and details filed. I find that the AO has issued notice u/s. 148 of the Act on the basis of information received from the Sales Tax Department which constituted tangible material- The appellant has not filed any objection to reopening of the case. The assessment has been made after providing opportunity to the appellant and making enquiries from the above said five parties. Therefore, the assessment made u/s.143(3) rws 147 of the Act is found to be in order. Ground No. 1 is dismissed.

4.3.1 I find that the appellant has submitted invoices of the said five parties (except that of Padmalakshmi Steel Alloys Pvt. Ltd. ledger accounts showing payments by cheque but it has failed to verify the actual delivery of the said purchases by producing the stock register. The appellant has also failed to produce the said parties or any confirmation from those parties as regards the purchases. The items purchased include LDO from Karan Enterprises, metal from Sidhivinayak Enterprises, MS angle from Ceeport Iron and Steel



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Pvt. Ltd and sand from Avani Corporation, The bills of Karan Enterprises show purchase for Ahmednagar project and Vehicle No. MH-43E-1836 is also mentioned and separate bill for transportation charge of Rs. 12,395/- has been raised. Other bills of Sidhivnayak Enterprises, Ceeport Iron and Steel Pvt. Ltd.

and Avani Corporation do not contain details of the delivery (i.e. Vehicle No. or mode of transportation) although receipt by the company has been noted. The appellant has not been able to furnish bills of purchases from Padmalakshmi Steel Alloys Pvt. Ltd. either in the assessment proceedings or in the appeal proceedings.

4.3.2 The appellant has submitted that under similar facts, the addition made on account of bogus purchases was restricted to the profit element (3.43% (gross profit) in A.Y. 2009-10 vide order dated 29.03.2016 by the CIT(A)-2, Mumbai in Appeal No. CIT(A)-/IT/27/2014-15, It has been that the appeal of the department against the said order was dismissed by the ITAT, Mumbai in ITA No.4403/Mum/2016 for A.Y. 2009-10 vide order dated 30.08.2017.

4.3.3 I find that the appellant has disclosed sales of construction project at Rs.157,681,475/- and the G.P. rate declared during A.Y. 2010-11 is higher than the G.P. rate in A.Y. 2009-10. Considering the above facts and circumstances and the above precedent in appellant's own case for A.Y. 2009-10, I am of the considered opinion that the addition in respect of the purchases of Rs.3,06,185/- from Padmalakshmi Steel Alloys Pvt. Ltd. needs to be upheld in its entirety since the appellant has failed to furnish even the purchase bill relating to the said transaction. In respect of the balance purchases of Rs.23,07,523/- the AO is directed to compute the disallowance at the rate of 9.44% which is the G.P. ratio for this assessment year. Accordingly, the addition made by the AG of Rs.26,13,708/- is restricted to Rs.5,24,015/- (Rs.306185 + Rs.217830), The AO is directed to re-compute the income accordingly. Ground No.2 taken by the appellant is partly allowed.”



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5. On appraisal of the above mentioned finding, we find that the CIT(A) has restricted the addition to the extent of gross profit rate declared in the A.Y.2010-11. The same view was taken by Hon'ble ITAT in the earlier assessment year of the assessee bearing ITA. No.4403/Mum/2016 for A.Y.2009-10 vide order dated 30.08.2017. Since the issue has duly been covered by the decision of the Hon'ble ITAT in the assessee's own case bearing ITA. No.4403/Mum/2016 for A.Y.2009-10 vide order dated 30.08.2017, therefore, by taking the similar view, we find that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, we decide this issue in favour of the assessee against the revenue.

6. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 03/09/2021

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 03/09/2021

Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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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**