



ITA No.5089/Mum/2015 & ITA No.5741/Mum/2015

Mayur Kamdar

Assessment Year- 2009-2010

**आयकर अपीलीय अधिकरण “जे” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“J” 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.5089/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Income Tax Officer 32(2)(3)</b> Room No. 305, 3 <sup>rd</sup> Floor C-11, Pratyakshar Kar Bhawan BKC, Bandra, Mumbai-400 051	<b>बनाम/ Vs.</b>	<b>Mayur R.Kamdar</b> 705, Shashi Apartment Devidas Lane, Borivali (W) Mumbai – 400 092
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AFUPK-8611-C</b>		
(अपीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

&

आयकर अपील सं./I.T.A. No.5741/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Mayur R.Kamdar</b> 705, Shashi Apartment Devidas Lane, Borivali (W) Mumbai – 400 092	<b>बनाम/ Vs.</b>	<b>Income Tax Officer 32(2)(3)</b> Room No. 305, 3 <sup>rd</sup> Floor C-11, Pratyaksh Kar Bhawan BKC, Bandra Mumbai-400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AFUPK-8611-C</b>		
(अपीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Anil Thakrar, Ld. AR
<b>Revenue by</b>	:	Aarju Garodia, Ld. Sr. AR

सुनवाई की तारीख / <b>Date of Hearing</b>	:	26/02/2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	28 /02/2018



## आदेश / ORDER

### Per Manoj Kumar Aggarwal (Accountant Member)

1. These are cross appeal for Assessment Year [AY] 2009-10 which contest stand of Ld. Commissioner of Income-Tax (Appeals)-44 [CIT(A)], Mumbai, *Appeal No.CIT(A)-44/ITA-135/32(2)(3)/2014-15* dated 01/09/2015 *qua* addition on account of *alleged bogus purchases*. The assessment for impugned AY was framed by *Ld. Income Tax Officer-32(2)(3) [AO] u/s 143(3) read with Section 147 of the Income Tax Act, 1961* on 16/03/2015 wherein the assessee has been saddled with addition of Rs.90,43,090/- on account of certain *alleged bogus purchases*.

2.1 Facts leading to the same are that the assessee being *resident individual* engaged in the business of *trading of building material* under proprietary concern namely *N.M.Traders* was subjected to reassessment proceedings for impugned AY vide issuance of notice u/s 148 dated 16/01/2014 which was followed by statutory notices u/s 143(2) and 142(1). The original return of income was filed by the assessee at Rs.4,58,690/- which was processed u/s 143(1).

2.2 The reassessment proceedings were initiated upon receipt of certain information from *Sales Tax Department, Maharashtra & DGIT (Investigation)* regarding dealers indulging in *bogus purchase bills* and it was noted that the assessee stood beneficiary of such *bogus purchase bills* to the tune of Rs.4,52,28,619/- from ten such parties. The assessee defended the purchases made by him but notices issued u/s 133(6) to confirm the transactions remained *un-served* with remarks like *left / not*



known. After considering assessee's submissions, documentary evidences and certain judicial pronouncements, Ld. AO adopted *Gross Profit Rate* of Rs.22.61% as against 6.07% reflected by the assessee against turnover of Rs.546.63 Lacs and added the differential profit of Rs.90,43,090/- to the income of the assessee.

3. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 01/09/2015 where Ld. CIT(A) restricted the disallowance to 3% of *alleged bogus purchases* which came to Rs.13,56,900/- and deleted the balance. Aggrieved, the assessee as well as revenue is in appeal before us.

4. The Ld. Departmental Representative [DR] submitted that the addition was on lower side whereas Ld. Authorised Representative for assessee [AR] pleaded for some more relief on the premise that the assessee had reconciled the sale and purchase transactions.

5. After considering rival contentions, we find no reason to interfere with the stand of Ld. CIT(A) since the assessee was engaged in trading activities and could not achieve the sales turnover without purchase of material. The turnover of the assessee has not been doubted by the revenue and the assessee is in possession of primary purchase documents & further, the payments are through banking channels. The assessee is able to reconcile the sale and purchase transactions. At the same time, the assessee could not produce any single party to confirm the transactions and notices issued u/s 133(6) were returned back *unserved* which cast a serious doubt on assessee's claim. Therefore, in such a situation, the addition, which could be made, was to account for profit element embedded in these purchase transactions to factorize for



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profit element earned by assessee against possible purchase of material in the *grey market* and undue benefit of VAT against *alleged* bogus purchases, which Ld.CIT(A) has rightly done. Therefore, finding the same quite fair and reasonable, we dismiss both the appeals.

6. Resultantly, both the appeals stands dismissed.

*Order pronounced in the open court on 28<sup>th</sup> February, 2018.*

Sd/-

**(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

Sd/-

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 28. 02.2018

Sr.PS:- *Thirumalesh*

**आदेश की प्रतिलिपि □ ग्रेषित/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