

**आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "डी" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**

**BEFORE S/SHRI B.R.BASKARAN (AM) AND SANJAY GARG, (JM)**  
**सर्वश्री बी.आर.बास्करन, लेखा सदस्य एवं श्री संजय गर्ग, न्यायिक सदस्य के समक्ष**

आयकर अपील सं./I.T.A. No.5246/Mum/2013  
(निर्धारण वर्ष / Assessment Year : 2010-11)

Asstt.Commissioner of Income Tax-25(2), Room No.108, 1 <sup>st</sup> floor, Bld. No.C-11, Pratyakshakar Bhavan, Bandra-Kurla Complex, Bandra (E), Mumbai-400051.	<b>बनाम/</b> Vs.	Shri Ramila Pravin Shah, 605, Shradha Residency, Chandavarkar Road, Borivali (W), Mumbai-400092
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :ANVPS9225M

अपीलार्थी ओर से / Appellant by	Shri Love Kumar
प्रत्यर्थी की ओर से/ Respondent by	Shri Bhupendra Shah

सुनवाई की तारीख / Date of Hearing : 5.3.2015

घोषणा की तारीख /Date of Pronouncement : 5.3.2015

**आदेश / O R D E R**

**Per B.R.BASKARAN, Accountant Member:**

The appeal of the Revenue is directed against the order dated 21.5.2013 passed by the Id.CIT(A)-35, Mumbai and it relates to assessment year 2010-11.

2. The revenue is aggrieved by the decision of Id.CIT(A) in deleting the disallowance of Rs.28.08 lakhs relating to unexplained expenditure made u/s 69C of the Income Tax Act, 1961 (the Act).

3. We heard the parties and perused the record. The assessee is engaged in the business of civil construction under the name and style of M/s Kailash Construction Co. The total purchase expenditure claimed by the assessee during the year under consideration was Rs.8,62,68,891/-. The AO noticed that the Sales Tax Department of Government of Maharashtra has listed out names of certain dealers, who were alleged to have been providing accommodation entries without doing actual business. The AO noticed that the assessee made purchases to the tune of Rs.28.08 lakhs from some of the parties, whose names found place in the list provided by the Sales Tax Department. The AO also considered the statements taken by Sales Tax Department from some of the parties. During the course of hearing, the AO deputed Inspector of Income Tax to serve notice u/s 133(6) of the Act. However, the Inspector reported that these parties were not available at given address. The AO also asked the assessee to submit delivery challans and stock register to prove the movement of stock and also asked to produce these parties. However, the assessee failed to furnish the details called for. Hence, by placing the reliance on the statements given by these parties before the Sales Tax Department, the AO took the view that the purchases to the tune of

Rs.28.08 lakhs have to be treated as unexplained expenditure. Accordingly, he assessed the same u/s 69C of the Act.

4. The Id. CIT(A) deleted the addition and hence the Revenue is in appeal before the Tribunal.

5. The Id. DR strongly placed reliance on the order of Assessing Officer.

6. On the other hand, the Id. AR submitted that the additions made in the case of some other assesses on identical reasons have been deleted by the Co-ordinate Benches of the Tribunal in the following cases :

a) Ramesh Kumar and Co V/s ACIT in ITA No.2959/Mum/2014 (AY-2010-11) dated 28.11.2014;

b) DCIT V/s Shri Rajeev G Kalathil in ITA No.6727/Mum/2012 (AY-2009-10) dated 20.8.2014; and

c) Shri Ganpatraj A Sanghavi V/s ACIT in ITA No. 2826/Mum/2013 (AY-2009-10) dated 5.11.2014

In all the above said cases, the Co-ordinate Benches of the Tribunal has held that the AO was not justified in making the addition on the basis of statements given by the third parties before the Sales Tax Department, without conducting any other investigation. In the instant case also, the assessing officer has made the impugned addition on the basis of statements given by the parties before the Sales tax department. We notice that the Id.CIT(A) has properly analysed the facts prevailing in the instant case and for the sake of convenience, we extract the same below:-

“5.3.11. I have also gone through the judicial pronouncements relied upon by the Ld AR and find that the facts of the above referred judicial pronouncements are similar to the present facts of the case and, therefore the ratio of judgments of the above referred two cases are fully applicable in the present case. Further, I have also taken into consideration the decision of jurisdictional High Court and ITAT i.e. The Commissioner of Income Tax - 1 Mumbai Vs Nikunj Eximp Enterprises Pvt, Ltd. Appeal No ITA No. 5604 of 2010 (Hon. Mumbai High Court) and Balaji Textile Industries (P) Ltd. Vs Income Tax Officer (1994) 49 ITD (Bom) 177. While in the case of Nikunj Eximp Enterprises, the Hon'ble Bombay High Court in its latest judgment has held that once the Sales are accepted, the Purchases cannot be treated as ingenuine in those cases where the appellant had submitted all details of purchases and payments were made by cheques, merely because the sellers/suppliers could not be produced before the A.O. by the assessee. Further, I have also gone through the judgment in case Balaji Textile Industries (P) Ltd. Vs Income Tax Officer by Hon. ITAT, Mumbai (1994) 49 ITD (BOM) 177 which was made as long back as 1994 and which still holds good in which was held that- "Issuing printed bills for selling the textile goods to the assessee-company at Bhiwandi was not a conclusive proof but it was a prima fade proof to arrive to a correct conclusion that the assessee purchased certain goods from certain parties at Bhiwandi. The assessee sold those goods to 'S' and adjusted the sale proceeds against the loan taken by it from that party. The assessee's books of account and the books of account of 'S' in which the entries of sale and adjustment were made, could not be discarded merely by saying that they were not genuine entries though neither the Assessing Officer nor the Commissioner (Appeals) opined anything in respect of those entries. Further, the purchase of the goods in the month of March 1985 did not make any difference. The assessee might not have carried on any business activities prior to March 1985, but that did not mean that the assessee was not entitled to carry on the business activity in March 1985. They could not be compelled to carry on the business activity throughout the year. There were no good reasons to disbelieve the sales made by the assessee to 'S'. No sales were likely to be effected if there were no purchases. A sale could be made if the goods were available with the seller. From all these facts on record, a reasonable and convincing inference which could be drawn, was that the assessee purchased the textile goods, sold them and adjusted the same towards the

loan taken by it. Therefore, the assessee was entitled to get the entire deduction." I have also taken into consideration, the G.P Ratio/G.P. Margin *of* the appellant in the previous A.Y. as well as subsequent Assessment Year. If the addition made by the A.O. is accepted, then G.P. Ratio *of* the appellant during the present A.Y.will become abnormally high and therefore that is not acceptable because it onus of the A.O. by bringing adequate material on record to prove that such a high G.P. ratio exists in the nature of business carried out by the appellant.

Further, it has to be appreciated that (i) Payments were through banking channel and by Cheque, (ii) Notices coming back, does not mean, those Parties are bogus, they are just denying their business to avoid sales tax/VAT etc, (iii) Statement by third parties cannot be concluded adversely in isolation and without corroborating evidences against appellant, (iv) No cross examination has been offered by AO to the appellant to cross examine the relevant parties (who are deemed to be witness or approver being used by AO against the appellant) whose name appear in the website [www.mahavat.gov.in](http://www.mahavat.gov.in) and (v) Failure to produce parties cannot be treated adversely against appellant.

In view of the facts discussed above as well as binding judicial pronouncements of the jurisdictional ITAT Mumbai Bench as well as Hon'ble Mumbai High Court and other legal precedents, the addition made by the AO amounting to Rs.28,08,071/- cannot be sustained. Accordingly, the addition of Rs.28,08,071/- is deleted."

7. Hence, on a conspectus of the matter, we do not find any infirmity in the decision of the Id. CIT(A) on this issue.

8. In the result the appeal of the revenue is dismissed.

The above order was pronounced in the open court on 5th Mar, 2015.

घोषणा खुले न्यायालय में दिनांक: 5<sup>th</sup> March, 2015 को की गई ।

sd

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(संजय गर्ग/SANJAY GARG)

( बी.आर.बास्करन / B.R. BASKARAN)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT

MEMBER

मुंबई Mumbai:5th March,2015.

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.

आदेशानुसार/ BY ORDER,

true copy

सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai