

आयकर अपीलीय अधिकरण “E” न्यायपीठ मुंबई में।

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

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER &
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.2763/Mum/2014
(निर्धारण वर्ष / Assessment Year : 2010-2011)

Safex Fire Services Ltd., 202-A, Dhanraj Industrial Estate, Sunmill Road, Lower Parel (W), Mumbai - 400 013.	बनाम/ Vs.	Dy. Commissioner of Income Tax - 7(2), Mumbai.
स्थायी लेखा सं./ PAN : AAEC57539M		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A. No.3869/Mum/2014
(निर्धारण वर्ष / Assessment Year : 2010-2011)

Dy. Commissioner of Income Tax - 7(2), Mumbai.	बनाम/ Vs.	Safex Fire Services Ltd., 202-A, Dhanraj Industrial Estate, Sunmill Road, Lower Parel (W), Mumbai - 400 013.
स्थायी लेखा सं./ PAN : AAEC57539M		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by	Shri Chetan A. Karia
Revenue by :	Shri Javed Akhtar (D.R.)

सुनवाई की तारीख / **Date of Hearing** : 14-10-2015
घोषणा की तारीख / **Date of Pronouncement** : 28-10-2015

आदेश / ORDER

PER R.C. SHARMA, A.M.

:

These are cross appeals filed by the assessee and revenue against the order of Id. CIT(A) -13, Mumbai dated 20-03-2014 for the assessment year 2010-11 in the matter of order passed u/s 143(3) of the Income Tax Act, 1961.

2. Rival contentions have heard and record perused. Facts of the case in brief are that the assessee is a manufacturer and trader in fire fighting equipments, components, spares as well as security system and maintenance of fire fighting equipments and security systems etc. For the relevant assessment year under consideration, the return of income was filed at a total income of Rs. 92.26 lacs. The case was selected for scrutiny under CASS. During the course of scrutiny assessment, the A.O. observed that the assessee has made purchase of Rs. 2,27,43,566/- from bogus suppliers. Accordingly, he added the entire amount of purchases in assessee's income. By the impugned order, the Id. CIT(A) reduced the addition to Rs. 43,39,406/- on the basis of statement of purchases prepared for the entire year and comparing the figure of purchases made from these suppliers with the rate of purchases prevailing on the date of purchases was made. Against the above order of Id. CIT(A), both the assessee and the Revenue are in further appeal before us.

3. We have heard rival contentions and found from the record that the assessee is in the business of manufacturer and trader in fire fighting equipments, components, spares as well as security system and maintenance of fire fighting equipments and security systems etc. having its office in Mumbai and factory at Palghar. In respect of the purchases, the assessee maintains stock record in the form of bin cards at its Palghar factory.

However, no separate consumption record was maintained. A summon was issued by the A.O. and he visited the office premises of the assessee on 15-01-2013 and recorded the statement of the assessee. The assessee was asked to prepare the consumption statement. The assessee prepared the detailed consumption statement justifying the purchases so made and consumed during the year. The detailed reply filed along with evidences which are placed at page 206 to 263 of the paper book. However, the A.O. added the purchases made from some of the parties. The assessee's contention regarding consumption of stock was declined which is supported by corresponding sales. These entire amount of purchases were added in assessee's income. At page 7, the A.O. has mentioned the reason for declining the purchases according to him information was received from DGIT (Inv.) regarding bogus purchases. The A.O. also observed that these suppliers are hawala operators and have only provided accommodation entries. The stock statement and stock register so prepared at the asking of A.O. was declined on the plea that the stock register was submitted by the assessee at a later date is only a makeover attempt. In an appeal filed before the Id. CIT(A), the Id. CIT(A) observed that the assessee is a manufacturer and therefore register called RG 1 and RG II should have been maintained, which the assessee has not maintained. The Id. CIT(A) further observed that the stock register was filed belatedly and that assessee had admitted before the Sales Tax Authorities regarding purchases from these parties. However, the Ld. CIT(A) agreed that the assessee has consumed the material for the purpose of manufacturing. However, he alleged that at some instances the rates of purchases was found to be inflated in the bills given by alleged parties. Thus the additions so made were restricted by the Id. CIT(A) to Rs. 43,39,406/-.

4. After going through the documentary evidences placed on record vis-à-vis the reply filed before the lower authorities, we find that the assessee is

maintaining regular books of account which have not been rejected. The rate difference has also not been rejected. Even, while preparing the rate difference statement, the ld. CIT(A) has not rejected the books of account. When the sales and consumption of material purchased have been accepted, therefore, as a natural corollary, the purchases were also required to be accepted because without purchases, there cannot be manufacturing or sale. The assessee has also produced evidence relating to transport of goods from Bombay office to Palghar office. We also found that the assessee is regularly maintaining the bin cards at Palghar factory. The stock record referred by both the A.O. and the ld. CIT(A) are consumption reconciliation prepared by the assessee at the instance of Revenue. This statement was prepared subsequent to the visit on 15-01-2013 when the A.O. asked assessee to prepare such consumption statement. As per the consumption statement so prepared, the utilisation of raw material purchased are fully justified, however, nothing wrong was found by the Revenue Authorities with regard to the consumption statement so prepared. Even the rate statement prepared by the ld. CIT(A) did not take into account the lower rate prevailing in the market at which the assessee has purchased from the regular supplier. As per our considered view both higher and lower rates are required to take into consideration to find out if any amount of profit is reduced by inflating the price. The books of account so maintained by the assessee were not rejected by any of the lower authorities. From the record we also found that the GP rate shown by the assessee during the year under consideration was higher as compared to the GP rate shown in the earlier two years. We found that in assessment years 2008-09 and 2009-10, the G.P. rate shown was 18.59% and 19.13% respectively, whereas the GP rate during the A.Y. 2010-11 under consideration was 20.99%. However, even in the A.Y. 2011-12 the GP rate was 20.27%. Thus, it is clear that the GP rate shown by the assessee in the year under consideration was better as compared to the GP rate of earlier as well as succeeding year. The fact that the books of account has also not been

rejected by the lower authorities, therefore, under such circumstances one has to take into account the fact that the GP rate shown by the assessee during the year under consideration is better than the earlier years. If the GP rate during the year under consideration is found to be lower as compared to the other years, the Department is free to take the higher GP rate shown in the earlier year, whereas in the instance case assessee itself had shown higher GP rate. Taking into account the totality of the facts and circumstances of case vis-à-vis observation of the lower authorities, we direct the A.O. to restrict the addition by taking 3%(three percent) of the purchases so made from the alleged suppliers so as to cover leakage of revenue , if any. We direct accordingly.

5. In the result, appeal of the assessee is allowed in part whereas appeal of the Revenue is dismissed.

Order pronounced in the open court on 28th October, 2015.

आदेश की घोषणा खुले न्यायालय में दिनांक: 28/10/2015 को की गई ।

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(R.C. SHARMA)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 28/10/2015

व.नि.स./ RK , Sr. PS

देश 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, Mumbai
4. आयकर आयुक्त / CIT –concerned Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai E Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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