



आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
 श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.561/Mum/2018
 (निर्धारण वर्ष / Assessment Year: 2010-11)
 &
 आयकर अपील सं./ I.T.A. No.562/Mum/2018
 (निर्धारण वर्ष / Assessment Year: 2011-12)

Laxmi Sanitary Engineers & Contracts 4A, Triumph Industrial Premises Co-op Soc. Ltd. Dindoshi, Vitbhatti, Goregaon (East) Mumbai-400 063.	बनाम/ Vs.	ACIT-Range-19(2) Piramal Chambers, Lalbaug Mumbai.
स्थायी लेखा सं./ जी आइ आर सं./ PAN/GIR No. AABLF-3994-M		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Viraj Mehta -Ld.AR
प्रत्यर्थी की ओर से/ Respondent by	:	Somnath M. Wajale - Ld.DR
सुनवाई की तारीख/ Date of Hearing	:	08/04/2019
घोषणा की तारीख / Date of Pronouncement	:	08/04/2019

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member):-

1.1 Aforesaid appeals by assessee for Assessment Years [AY] 2010-11 & 2011-12 contest separate orders of first appellate authority *qua* confirmation



of certain additions on account of *alleged bogus purchases*. Although the assessee, in its ground of appeal, has challenged the legality of reassessment proceedings u/s 147/148, however, no arguments, in this regard, have been made during hearing before us and therefore, the same are not considered while adjudicating the appeals. Since common issues are involved under both the appeals, we proceed to dispose-off the same by way of this common order for the sake of convenience & brevity.

1.2 It has been noted that the appeals have been filed with a delay of 57 days, the condonation of which has been sought by the assessee on the strength of condonation petition dated 15/12/2017 duly supported by an affidavit of one of the partners of assessee firm. Upon perusal of the same, it transpires that the delay has been attributed to the fact that the *Chartered Accountant* of the assessee could not hand over the impugned order to the assessee due to his illness. Although Ld. DR opposed the condonation, however, the bench formed an opinion that keeping in view the principles laid down by Hon'ble Apex Court in **167 ITR 471 (SC) Collector, Land Acquisition Vs. Katiji**, the assessee deserve condonation of delay. We order so. First, we take up appeal for AY 2010-11.

ITA No. 561/Mum/2018 AY: 2010-11

2.1 Facts leading to the present appeal are that the assessee being *resident firm* stated to be engaged as *service contractor of plumbing & sanitary work* was subjected to reassessment proceedings by Ld. Assistant Commissioner of Income Tax-Circle 19(2), Mumbai [AO] for the impugned AY u/s 143(3) *read with Section 147* on 19/03/2014 wherein the assessee was saddled with estimated additions of 25% on account of *alleged bogus*



purchases for Rs.228.76 Lacs stated to be made from 6 parties. The party-wise details have already been extracted in the quantum assessment order at *para 4.1*. The original return of income filed on 09/10/2010 was processed u/s 143(1).

2.2 The reassessment proceedings got triggered vide issuance of notice u/s 148 dated 26/04/2013 pursuant to receipt of certain information from *Sales Tax Authorities* that the assessee stood beneficiary of *alleged bogus purchases* aggregating to Rs.228.76 Lacs from 6 parties. These purchases were stated to be made without actual purchase / delivery of material from those parties. Although the assessee defended the same vide reply dated 13/03/2014, however, the same could not find favor with Ld. AO who estimated the additions @25% against these purchases and accordingly, made an addition of Rs.57.19 Lacs in the hands of the assessee. The stand of Ld. AO, upon confirmation by first appellate authority, is under appeal before us.

3. The only submissions advanced by Ld. AR is the fact that the assessee was saddled with similar additions in AY 2009-10 which reached up-to the level of this Tribunal vide ITA No. 560/Mum/2018 order dated 02/07/2018 wherein the additions have been restricted to 2% of *alleged bogus purchases* and therefore, impugned additions may be restricted to that extent. Although Ld. DR supported the stand of lower authorities in making the impugned additions, however, failed to rebut the said fact.

4. Upon careful consideration of rival submissions, we concur with the stand of Ld. AR that similar issue in AY 2009-10 has already been adjudicated by the coordinate bench of this tribunal in assessee's own



case, a copy of which has been placed on record. We find that similar additions made by the revenue in AY 2009-10 has been restricted to 2% after consideration of factual matrix. No material changes in facts or circumstances have been demonstrated before us. Nothing on record suggest that the aforesaid ruling is not applicable to the fact of the case. Therefore, finding no reason to deviate from the same, we direct Ld. AO to restrict the impugned additions to 2% of *alleged bogus purchases*. The appeal stands partly allowed.

ITA No. 562/Mum/2018 AY: 2011-12

5. The facts are identical in this AY wherein the assessee has been saddled with estimated disallowance of 25% against *alleged bogus purchases*. The stand of Ld. AO, upon confirmation by first appellate authority, is under challenge before us. Facts and circumstances being *pari-materia* the same, we direct Ld. AO to restrict the impugned additions to 2% of *alleged bogus purchases*. The appeal stands partly allowed.

Conclusion

6. Both the appeals stand partly allowed.

Order pronounced in the open court on 08th April, 2019.

Sd/-
(Saktijit Dey)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant



2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.