

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
6864/Mum/18	2010-11	The Income Tax Officer, Ward-3(4), Kalyan	Satyanarayana C. Jakkul, B/04-001, Asha Park, Pandurangwadi, Manpada Road, Dombivli [PAN: ADMPJ5301L]
6865/Mum/18	2011-12		

Revenue by : Shri R.Bhoopathi, DR
Assessee by : Shri Nimesh Chothani, AR

Date of Hearing : 16-12-2019	Date of Pronouncement : 17-12-2019
------------------------------	------------------------------------

ORDER

These two appeals by the Revenue are directed against the order of the Commissioner of Income Tax(Appeals)-1, Thane, dated 21-09-2018, common for the AYs.2010-11 & 2011-12.

2. The brief facts of the case as emanating from records are: The assessee is a trader in iron and steel. On the basis of the information received from Sales Tax Department, Government of Maharashtra, the assessments of assessee for the AYs.2010-11 & 2011-12 were re-opened. In re-assessment proceedings, the Assessing Officer (AO) observed that the assessee has indulged in obtaining bogus purchase bills from certain hawala dealers and thus made addition of Rs.7,55,588/- in AY.2010-11 and Rs.19,79,437/- in AY.2011-12.

Aggrieved against the assessment order for the respective assessment years, the assessee filed appeals before the CIT(A).

3. The CIT(A) vide impugned order common for both the assessment years under appeal, restricted the addition to 25% of the alleged bogus purchases i.e., Rs.1,88,897/- in AY.2010-11 and Rs.4,94,859/- in AY.2011-12.

Against the order of CIT(A), the Revenue is in appeal for both the assessment years.

4. Shri R.Bhoopathi, representing the Department, vehemently defended the assessment order. The ld.DR submitted that the assessee has failed to substantiate genuineness of the purchases. The assessee also failed to furnish copies of transport and octroi bills, thus, the assessee could not establish trial of goods originating from suppliers to the godown of the assessee. The ld.DR prayed for modifying the order of CIT(A) and confirming the entire bogus purchases as 'addition'.

5. Per contra, Shri Nimesh Chothani, appearing on behalf of the assessee, vehemently defended the impugned order and prayed for dismissing the appeals of Revenue.

Decision of Tribunal:

ITA No.6864/Mum/2018 (AY.2010-11):

6. The submissions made by rival sides heard and the orders of the authorities below perused. The sales made by

the assessee have not been disputed by the Revenue. Therefore, the entire alleged bogus purchase cannot be added back. Without purchases, there cannot be sales. In the given facts of the case, it appears that the assessee has made purchases from grey market and thereafter, obtained bills from alleged hawala operators. The FAA has restricted the addition to the extent of 25% of the bogus purchases i.e., Rs.1,88,897/-. I am of considered view that the order of CIT(A) is fair and reasonable, hence, no interference is warranted. The impugned order is upheld and the appeal by Revenue is dismissed.

ITA No.6865/Mum/2018 (AY.2011-12):

7. The facts in AY.2011-12 are similar to AY.2010-11. The CIT(A) has restricted the addition to 25% of bogus purchases i.e., Rs.4,94,859/-. The findings given while adjudicating appeal for AY.2010-11 would *mutatis mutandis* apply to AY.2011-12. Hence, this appeal of Revenue is also dismissed for similar reasons.

8. In the result, the appeals of Revenue for both the assessment years are dismissed.

*Order pronounced in the open court on Tuesday,
the 17th day of December, 2019*

Sd/-
(VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai; दिनांक/Dated : 17-12-2019

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), Mumbai
4. आयकर आयुक्त / CIT, Mumbai
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./Asst. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai