

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

ITA No.1827/Kol/2019
Assessment Year:2009-10

Fenil Subhash Shah C/o Simplex Engg. Co., Marshall House, Room No. 322, 3 rd Floor, 33/1,N.S.Road, Kolkata-001 [PAN No. AIZPS 4613 G]	बनाम / V/s.	Income Tax Officer Ward-31(3), 10B, Middleton Row, Kolkata-700 016
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri S.L.Kochar, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Jayanta Khanra, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	05-02-2020
घोषणा की तारीख/Date of Pronouncement	12-02-2020

आदेश /O R D E R

This assessee's appeal for assessment year 2009-10, arises against the Commissioner of Income-tax (Appeals)-09 Kolkata's order dated 06.06.2019 passed in case No.33/CIT(A)-9/Wd-31(3)2015-16/Kol, involving proceedings u/s. 147 r.w.s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard Shri S.L. Kochar, representing assessee and Shri Jayanta Khanra, senior departmental representative appearing at the Revenue's behest. Case file perused.

2. It transpires during the course of hearing that the assessee's sole grievance canvassed in the instant lis challenge correctness of both the lower authorities action disallowing purchases of ₹1,62,536/- since involving bogus invoices from Maharashtra based suppliers. Learned departmental representative emphasises that the DGIT (Inv.), received information from Sales Tax Department, Govt. of Maharashtra

highlighting the impugned fake invoices scam. The assessee on the other hand vehemently pleads that the corresponding sales out of the concerned purchases already stand accepted in the assessment itself. Learned counsel fails that merely because sales are accepted, it does not amount to proving genuineness of the purchases in issue. This tribunal's co-ordinate bench's in *Deepak Ramchand Teckwani vs. Income Tax Officer, Ward-2(1), Kalyan ITA No.3029/MUM/2017* decided on 19.09.2018 also holds in the very fake invoices scam that only gross profit @ 12.5% has to be added in case of the alleged fake invoices. I therefore follow suit and direct the Assessing Officer to restrict the impugned addition of ₹1,62,536/- to that @ 12.5% only. Necessary computation shall follow as per law.

Learned counsel is fair enough in not pressing for assessee's former grievance challenging validity of re-opening.

3. This assessee's appeal is allowed in above terms.

Order pronounced in open court on 12/02/2020

Sd/-
(S.S. Godara)
Judicial Member

Kolkata,
*Dkp/Sr.PS

दिनांक:- 12/02/2020 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Fenil Subhash Shah C/o Simplex Engg. Co., Marshall House Room No.322 3rd Floor, 33/1, N.S.Road, Kolkata-700 001
2. प्रत्यर्थी/Respondent-ITO Ward-31(3), 10B, Middleton Row, Kolkata-700 016
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।