

आयकर अपीलिय अधिकरण
IN THE INCOME TAX APPELLATE TRIBUNAL

मुंबई पीठ "एसएमसी"
MUMBAI BENCH "SMC", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं. ITA NO.412/MUM/2019(A.Y.2009-10)

आअसं. ITA NO.413/MUM/2019(A.Y.2010-11)

आअसं. ITA NO.414/MUM/2019(A.Y.2011-12)

ITO -33(1)(2)

Pratyakshkar Bhavan, C-12, 7th Floor,

Room No.704, BKC, Bandra(E)

Mumbai 400 051

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Balaji Enterprises,

Plot No.403, B-Wing,

Nanasaheb Apts., Akurli Road,

Kandivali (East), Mumbai 400 101

PAN: AAIFB7666D

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri R. Bhoopathi

प्रतिवादी द्वारा/Respondent by : कोई नहीं/None

सुनवाई की तिथि/ Date of hearing : 23/01/2020

षणा की तिथि/ Date of pronouncement : 12/03/2020

आदेश/ ORDER

These three appeals by the Revenue are directed against the orders of Commissioner of Income Tax (Appeals)-45, Mumbai (in short 'the CIT(A)) for the assessment years 2009-10,2010-11 & 2011-12 respectively. The impugned

orders by the CIT(A) in all the three appeals are of even date i.e. 26/04/2016. Since, the facts germane to issue in all the assessment years are similar and the grounds raised by the Revenue in all appeals are identical, these appeals are taken up together for adjudication and are disposed of by this common order. For the sake of convenience, the facts are extracted from the appeal of the Revenue for assessment year 2009-10.

2. The brief facts as emanating from records are: Information was received by the Assessing Officer from Investigation Wing of the Department that the assessee has indulged in obtaining bogus purchase bills from declared hawala dealers amounting to Rs.18,86,384/-. The notice under section 148 was duly served on the assessee. Despite service of notice the assessee failed to appear before the Assessing Officer. Since despite repeated notices, the assessee failed to appear, the Assessing Officer was constrained to pass assessment order after invoking the provisions of section 144 of the Income Tax Act, 1961 (in short 'the Act'). The Assessing Officer made addition of the entire alleged bogus purchases made by the assessee during the relevant period. Aggrieved against assessment order dated 21/03/2016 passed under section 144 r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) after examining facts of the case restricted the addition to 12.5% of the alleged bogus purchases i.e. Rs.2,35,798/-. Hence, the present appeal by the Revenue.

3. Shri R. Bhoopathi, representing the Department submitted that the assessee has failed to prove genuineness of the purchases. Rather, the assessee has not appeared before the Assessing Officer at all. No material was brought on record by the assessee in the form of invoice, lorry receipts, stock

register, etc. to substantiate genuineness of the purchases. The Id. Departmental Representative prayed for reversing the findings of CIT(A) and confirming the assessment order.

4. I have heard the submissions made by Id. Departmental Representative and have perused the orders of the authorities below. The assessee is engaged in the business of piling, drilling, fabrication and civil construction and manufacturing of machines for the same. The assessee allegedly made bogus purchases to the tune of Rs.18,86,384/- from declared hawala dealers. The sales declared by the assessee have not been disputed by the Revenue. Thus, without purchase of raw material, there cannot be manufacturing, hence, the entire bogus purchases cannot be added. It is only profit embedded in disputed purchases that has to be brought to tax. The CIT(A) after examining the facts of the case has restricted the addition to 12.5% of the alleged bogus purchases. I find the impugned order well reasoned and justified and hence, does not warrant any interference. Accordingly, the same is upheld and the appeal of the Revenue is dismissed being without any merit.

ITA No.413/Mum/2019 (A.Y. 2010-11):

5. The facts in the assessment year 2010-11 are identical to the facts in assessment year 2009-10, except for the amount of addition. The Assessing Officer in assessment year 2010-11 has made addition of Rs.11,78,575/- in respect of bogus purchases. Since, the facts are similar and the grounds raised by the Revenue assailing findings of CIT(A) are identical to the one raised in 2009-10, the findings given while adjudicating the appeal of the Revenue for assessment year 2009-10 would mutatis mutandis apply to the assessment

year 2010-11 as well. For the similar reasons, the appeal of the Revenue is dismissed being devoid of any merit.

ITA No.414/Mum/2019,A.Y. 2011-12:

6. The facts in the assessment year 2011-12 are identical to the facts in assessment year 2009-10, except for the amount of addition. The Assessing Officer in assessment year 2011-12 has made addition of Rs.17,97,258/- in respect of bogus purchases. Since the facts are similar and the grounds raised by the Revenue assailing findings of CIT(A) are identical to the one raised in 2009-10, the findings given while adjudicating the appeal of the Revenue for assessment year 2009-10 would mutatis mutandis apply to the assessment year 2011-12 as well. For the similar reasons, the appeal of the Revenue is dismissed being devoid of any merit.

7. To sum up, all the three appeals by the Revenue are dismissed.

Order pronounced in the open court on Thursday the 12th day of March, 2020.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated12/03/2020

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai