

आयकर अपीलिय अधिकरण
IN THE INCOME TAX APPELLATE TRIBUNAL
मुंबई पीठ "एस एम सी"
MUMBAI BENCH "SMC", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं. ITA NO.417/MUM/2019(A.Y.2010-11)

आअसं. ITA NO.418/MUM/2019(A.Y.2011-12)

Income Tax Officer 6(3)(1),
5th Floor, Room No.510,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

Fluid Power Pvt. Ltd.
40-E, Municipal Compound,
KK Marg, Jacob Circle, Mumbai 400 011
PAN: AAACF0605R

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri R. Bhoopathi

प्रतिवादी द्वारा/Respondent by : None

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

षणा की तिथि/ Date of pronouncement : 13/03/2020

आदेश/ ORDER

These appeals by the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-12, Mumbai (in short 'the CIT(A)) for the assessment years 2011-11 and 2011-12, respectively.

2. The appeal of the Revenue in ITA No.417/Mum/2019 for assessment year 2010-11 is against the order of CIT(A) dated 12/11/2018. The appeal is

time barred by 19 days. The Id.Departmental Representative made oral request for condonation of 19 days delay in filing of the appeal. Taking into consideration that there was only minor delay in filing of the appeal, the prayer of the Id.Departmental Representative is accepted and the delay in filing of the appeal is condoned. The appeal is admitted to be heard and disposed of on merits.

3. Notice of the appeal was sent to the assessee through RPAD. The acknowledgment of the notice available on record shows that the notice was served on the assessee. Despite service of notice, none appeared on behalf of the assessee, nor any request for adjournment has been received. It appears that the assessee is not keen to pursue the appeal. Therefore, the appeal is take up for adjudication with the assistance of Id.Departmental Representative and the material available on record.

4. The Id.Departmental Representative submitted that the assessee is engaged in manufacturing of engineering equipments. During the period relevant to assessment year 2010-11 the assessee made bogus purchases of Rs.39,422/- from hawala dealers. The Assessing Officer made addition of the entire such bogus purchases. The assessee carried the issue in appeal before the CIT(A). The CIT(A) restricted the disallowance to 12.5% of the alleged bogus purchases. Hence, the present appeal by the Revenue. The Id.Departmental Representative asserted that the CIT(A) has erred in estimating disallowance on bogus purchases at 12.5% without there being any cogent evidence.

5. I have heard the submission made by Id.Departmental Representative and have examined the material on record. The assessment was reopened on the ground that the assessee had obtained bogus purchase bills amounting to Rs.3,39,826/- from the hawala dealers. During the course of reassessment proceedings, the assessee produced one of the alleged hawala dealers i.e. M/s.Padam Enterprises and furnished confirmations and copies of the bills aggregating to Rs.3,00,404/-. Consequently, Assessing Officer restricted the disallowance to unproved purchases of Rs.39,422/-. I find that the Assessing Officer has not question the turnover of assessee. Without purchase there cannot be manufacturing. Further, it is a well settled proposition now that only element of profit embedded in alleged bogus purchases should be taxed and not the entire bogus purchases. The CIT(A) after examining the facts restricted the disallowance to 12.5% of the alleged bogus purchases. I find no infirmity in the order of CIT(A), hence, the same is upheld and the appeal of Revenue is dismissed.

ITA NO.418/MUM/2019(A.Y.2011-12):

6. The Id.Departmental Representative submitted that the nature of disallowance and manner of disallowance in assessment year 2011-12 is similar to assessment year 2010-11. The Assessing Officer disallowed bogus purchases of Rs.22,519/-. The CIT(A) restricted the addition to 12.5%.

7. I have heard the submissions made by Id.Departmental Representative and have examined the impugned order. Since facts in the assessment year under appeal are at parity with facts in assessment year 2010-11, the findings given in assessment year 2010-11 would *mutatis mutandis* apply to the present

assessment year as well. Thus, appeal of the Revenue is dismissed being devoid of any merits.

8. In the result, both the appeals by the Revenue are dismissed.

Order pronounced in the open court on Friday the 13th day of March, 2020.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 13/03/2020

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषित Copy 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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai