

आयकर अपीलीय 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.419/MUM/2019(A.Y.2010-11)

आअसं. ITA NO.420/MUM/2019(A.Y.2011-12)

ITO 27(1)(4),
Room No.409, 4th Floor, Tower No.6,
Vashi Railway Station Complex,
Vashi , Navi Mumbai- 400 0703

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Excel Tech Systems,
Block No.10, Vishnu Niwas, LNM Road,
Opp. Uday Talkies, Ghatkopar(W)
Mumbai 400 086
PAN: AACFE 1051B

..... 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 : 13/03/2020

आदेश/ ORDER

These two appeals by the Revenue are directed against orders of the Commissioner of Income Tax(Appeals)-24, Mumbai (in short 'CIT(A)) for the assessment year 2010-11 and 2011-12, respectively. Both the impugned orders are of even date i.e. 26/10/2018. Since the facts in both the assessment

years are similar and the grounds raised by the Revenue in both appeals are identical, these appeals are taken up together for adjudication and are disposed of by this common order

2. Notice of appeals was sent to the assessee/respondent through RPAD. The acknowledgement available on record indicates that the notice has been duly served. Despite service of notice, neither any Authorized Representative of the assessee has appeared nor any letter seeking adjournment, on behalf of the assessee has been received. It appears that the assessee is not keen to contest the appeals. Under such circumstances, we proceed to decide the appeals with the assistance of Id.Departmental Representative and the material available on record.

ITA No.419/Mum/2019(A.Y-2010-11):

3. For the sake of convenience, the facts are extracted from the appeal of the Revenue for assessment year 2010-11. The assessee is engaged in manufacturing of Ultrasonic Cleaning Machines. The Assessing Officer on the basis of information received from Investigation Wing of the Department reopened the assessment. As per information received, the assessee had obtained bogus purchase bills from various hawala dealers. During the period relevant to the assessment year under appeal, the assessee had procured bogus purchase bills amounting to Rs.18,84,512/-. The Assessing Officer made addition of the entire alleged bogus purchases. Aggrieved against the assessment order dated 19/01/2016, passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act'), the assessee filed appeal before CIT(A). The first appellate authority after considering the facts of the case and

the decision in the case of Simit P. Sheth, 356 ITR 451(Guj) restricted the disallowance in respect of alleged bogus purchases to 12.5% of the total such purchases i.e. Rs.2,35,564/-. Against the findings of the CIT(A), the Revenue is in appeal before the Tribunal.

4. Shri R. Bhoopathi, representing the Department submitted that during the assessment proceedings, the assessee failed to produce the vendors from whom the assessee had allegedly purchased raw materials used in the manufacturing. The assessee could not prove genuineness of the purchases made, hence, the Assessing Officer made addition of the entire bogus purchases.

5. I have heard the submissions made by Id.Departmental Representative and have examined the material available on record. The addition has been made by Assessing Officer on the basis of information received from Investigation Wing that the assessee has indulged in obtaining bogus purchase bills. The sales declared by the assessee have not been disputed by the Revenue. Without purchases there cannot be manufacturing of goods by the assessee. Thus, entire alleged bogus purchases cannot be added. It is only the profit element embedded in unproved purchases that can be brought to tax. The CIT(A) has restricted the disallowance to 12.5% of the disputed bogus purchases in line with the decision of Hon'ble Gujarat High Court in the case of Simit P. Sheth(supra). We do not find any infirmity in the order of first appellate authority. Accordingly, the same is upheld and the appeal of the Revenue is dismissed being devoid of any merit.

ITA NO.420/MUM/2019(A.Y.2011-12)

6. I find that facts in the assessment year 2011-12 are similar to facts in assessment year 2010-11 except for the amount of alleged bogus purchases. The Assessing Officer had made disallowance of entire alleged bogus purchases aggregating to Rs.16,98,823/-. The reasons for making of addition of the entire alleged bogus purchases in the assessment year 2011-12 is the same as was in 2010-11. The CIT(A) restricted the disallowance to 12.5% of the total alleged bogus purchases. The Id. Departmental Representative submitted that the facts in both assessment years are identical except for the amount of addition. The findings given while adjudicating the appeal of the Revenue in assessment year 2010-11 would mutatis mutandis apply to assessment year 2011-12 as well. The appeal of the Revenue is dismissed for parity of reasons.

7. In the result, both the appeal 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 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