

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एस एम सी"  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 2906/मुं/2019 (नि.व.2011-12)  
ITA NO. 2906/MUM/2019 (A.Y.2011-12)

ITO-17(3)(5),  
Room No.137, 1<sup>st</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai 400 020.

: अपीलार्थी/ Appellant

**बनाम/** Vs.

Uday Trading Corporation,  
2<sup>nd</sup> Floor, 243, Nagdevi Street,  
Mumbai- 400 003  
PAN: AAAFU0724H

: प्रत्यर्थी/ Respondent

**Revenue by** : Shri Ajay Pratap Singh  
**Assessee by** : Shri Rajesh Shah

सुनवाई की तारीख/ : 12/10/2020  
**Date of Hearing**  
घोषणा की तारीख / : 14/12/2020  
**Date of Pronouncement**

**आदेश/ ORDER**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-28, Mumbai (in short 'the CIT(A)') dated 08/02/2019 for the assessment year 2011-12.

2. The brief facts of the case as emanating from records are: The assessee is engaged in trading of hardware, tools, ball bearing and other allied products. On the basis of information received from Sales Tax Department, Government of

Maharashtra by DGIT(Investigation), Mumbai, the assessment for assessment year 2011-12 in the case of assessee was reopened. As per information received, the assessee allegedly obtained bogus purchase bills amounting to Rs.4200/- from M/s. Mahavir Trading, one of the suspicious dealers engaged in providing accommodation entries. The Assessing Officer in reassessment proceedings made addition of the entire alleged bogus purchases. Aggrieved by the assessment order dated 30/11/2016, passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 ( in short 'the Act'), the assessee filed appeal before the CIT(A). The CIT(A) after examining the facts, restricted the disallowance to 12.5%. Against the findings of CIT(A), the Revenue is in appeal.

3. Shri Ajay Pratap Singh, representing the Department submitted that though the tax effect involved in the appeal is less than the monetary limit specified vide CBDT Circular No. 17/2019, dated 08-08-2019 but the case of assessee falls under exception specified in para 10(e) of Circular No. 03 of 2018 dated 11/07/2018 and amended on 20/08/2018. The Id.Departmental Representative submitted that the assessee had obtained accommodations entries from declared hawala dealer. During the assessment proceedings the assessee failed to prove genuineness of the purchases, therefore, the Assessing Officer made addition of the entire such bogus purchases. The Id.Departmental Representative prayed for reversing the findings of CIT(A) and restoring the finding of Assessing Officer.

4. Per contra, Shri Rajesh Shah, appearing on behalf of the assessee vehemently defended the order of CIT(A) in restricting the disallowance on alleged bogus purchases to 12.5%. The Id.Authorized Representative of the assessee submitted that sales made by the assessee have not been doubted by the Assessing Officer, therefore, the entire alleged bogus purchases cannot be added. Without corresponding purchases there cannot be sales. The Id.Authorized Representative of the assessee prayed for confirming the findings of CIT(A) and dismissing the appeal of Revenue.

5. Both sides heard, orders of authorities below examined. The assessee is stated to have obtained bogus purchase bills amounting to Rs.4,200/- from hawala dealers. The Assessing Officer made addition of the entire bogus purchases. The CIT(A) restricted the disallowance to 12.5% of such bogus purchases. Undisputedly, the Revenue accepted the sales declared by the assessee. Without corresponding purchases there cannot be sales, therefore, in such like suspicious transactions it is only the profit element embedded in bogus purchases that has to be brought to tax.[ Re.PCIT vs. Paramsakhti Distributors Pvt. Ltd., Income Tax Appeal No.413 of 2017 decided on 15/07/2019 by Hon'ble Bombay High Court]. I find no infirmity in the impugned order, hence, the same is upheld and appeal by the Revenue is dismissed.

6. In the result, appeal by the Revenue is dismissed.

Order pronounced on Monday the 14<sup>th</sup> day of December, 2020.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 14/12/2020

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