

## आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई

### **IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI**

श्री विकास अवस्थी, न्यायिक सदस्य एवं श्री एन. के. प्रधान, लेखा सदस्य के समक्ष

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND  
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 2692/Mum/2019

(निर्धारण वर्ष / Assessment Year 2011-12)

Praveen Kumar Gupta Shop No.228, Motiwal Mansion, Maulana Azad road, Mumbai-400 008	बनाम/ Vs.	The Income Tax Officer Ward 20(2)(5), R. No.208, 2 <sup>nd</sup> Floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400 012
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AACPG3961A		

अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से/ Respondent by	:	Ms. Shreekala Pardeshai, DR

सुनवाई की तारीख / Date of hearing:	21.12.2020
घोषणा की तारीख / Date of pronouncement:	30.12.2020

### **आदेश / ORDER**

श्री विकास अवस्थी, न्यायिक सदस्य के द्वारा

**PER VIKAS AWASTHY, JM:**

This appeal by the is directed against the order of Commissioner of Income Tax (Appeals)-32, Mumbai (in short 'the CIT(A)') dated 06.03.2019 for the Assessment Year 2011-12.

2. The notice of hearing of this appeal was sent to the assessee through RPAD. The notice has been received back unserved with Postal Remarks 'Left'. The notice was sent to the assessee on the address



mentioned in Form No.36 filed by the assessee. The assessee has not filed any revised Form 36, intimating new/ fresh address. The notice of hearing of the appeal were earlier sent to the assessee through RPAD for hearing fixed on 29.04.2020 and 05.11.2020 As per file the same have not been received back unserved therefore deemed to be served. It seems, the assessee is not interested in pursuing the appeal. Accordingly, the same is decided on the basis of documents on record and the submissions made by the learned Departmental Representative.

3. Ms. Shreekala Pardeshai, representing the Revenue submitted that the Revenue had also filed cross appeal before the Tribunal against the order of CIT(A) for Assessment Year 2011-12 in ITA No. 3699/Mum/2019. The appeal of Revenue was heard by 'C' Bench on 02.11.2020. At the time of hearing of appeal by the Revenue, the Department was not aware of the Cross Appeal filed by the assessee against the same order of CIT(A). Therefore, only appeal of the Revenue was heard. The learned Departmental Representative submitted that the Tribunal vide order dated 14.12.2020 has dismissed the appeal of Revenue upholding the findings of CIT(A).

4. We have heard the submissions made by the learned Departmental Representative and have examined the orders of the authorities below. The assessee is a proprietor of M/s Haryana Steel International and is engaged in trading of iron and steel sheets etc. The assessee filed his return of income for the impugned assessment year on 21.09.2011 declaring total income of ₹3,47,560/-. The return



of the assessee was processed under section 143(1) of the Income-tax Act, 1961 (hereinafter 'the Act'). Thereafter, on the basis of the information received by DGIT Investigation, Mumbai from Sales Tax Department, Govt. of Maharashtra, the assessment for Assessment Year 2011-12 was reopened under section 148 read with section 147 of the Act. As per the information received, the assessee had obtained bogus purchase bills amounting to ₹16,00,59,300/- from M/s Miru Enterprises, a declared hawala operator. The Assessing Officer estimated GP at the rate of 12.5% on the bogus purchases and made addition of ₹2,00,07,413/-. Aggrieved, by the assessment order dated 07.11.2016 passed under section 143(3) read with section 147 of the Act, the assessee filed appeal before the CIT(A) challenging validity of reopening, as well as, addition on merits. The CIT(A) upheld the validity of reopening. So far as on merits of the addition, the CIT(A) followed the order of Tribunal in assessee's own case in ITA No. 853/Mum/2017 for Assessment Year 2010-11 decided on 30.08.2017 and restricted the addition to ₹73,62,728/- by applying the rate of 4.6%. Still aggrieved, the assessee is in appeal before the Tribunal assailing the findings of CIT(A) upholding validity of reopening and the extent of addition sustained qua bogus purchases.

5. A perusal of the assessment order shows that the assessee in order to prove genuineness of purchases had produced purchase and sale invoices, ledger accounts, unsigned delivery challans and the affidavit from the proprietor of M/s Mira Enterprises admitting that he had issued bogus purchase bills to some parties, however as per the affidavit, the transactions with the assessee were stated to be



genuine. However, documents to prove trail of goods such as, purchase register, lorry receipts, transportation details, etc. were not furnished by the assessee. The Assessing Officer in order to verify genuineness of the transaction issued notice under section 133(6) of the Act to M/s Miru Enterprises and directed to produce sales bills. Neither the said supplier appeared before the Assessing Officer nor any documents were furnished by him to support assessee's claim. Thus, the assessee could not prove genuineness of purchases made from M/s Miru Enterprises in the period relevant to the assessment year under appeal.

6. We observe that in Assessment Year 2010-11, addition on account of bogus purchases were made in the hands of the assessee for similar reasons. In Assessment Year 2010-11, the assessee had purportedly made bogus purchase transactions with M/s Miru Enterprises. The Assessing Officer made addition by estimating GP at 12.5% on bogus purchases. In first appellate proceedings, the CIT(A) restricted the addition to 4.60%. The Revenue carried the issue in appeal before the Tribunal in ITA No. 853/Mum/2017 (supra). The Tribunal upheld the findings of CIT(A). For the sake of completeness, the relevant extract of the findings of the co-ordinate Bench are reproduced herein below: -

*"7. ....We are of the considered view that in the backdrop of the aforesaid fact, the estimation of the profit element on the purchase of the steel sheets by the assessee from the open/grey market would fairly be covered by the rate of 4.60% adopted by the CIT(A). We thus find ourselves*



*to be in agreement with the addition sustained by the CIT(A), and find no reason to dislodge the same. We thus uphold the order of the CIT(A)."*

7. The CIT(A) in impugned order has followed the above order of the Tribunal for Assessment Year 2010-11 and restricted the addition to 4.60%. The co-ordinate Bench of the Tribunal while deciding the appeal of Revenue for the impugned Assessment Year (i.e. Assessment Year 2011-12) in ITA No.3699/Mum/2019 (supra) has upheld the findings of the CIT(A). The relevant extract of the order of the Tribunal in Cross Appeal filed by the Department for the same Assessment Year is as under: -

*"5. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by following the decision of the co-ordinate bench of the Tribunal in assessee's own case in Assessment Year 2010-11 in ITA No.853/Mum/2017 wherein a GP rate of 4.6% has been applied thereby sustaining the addition of ₹73,62,728/- as against ₹2,00,07,413/- made by the AO. We observe that Ld. CIT(A) has followed the decision of the co-ordinate bench of the Tribunal in the assessee's own case in Assessment Year 2010-11 and therefore, there is no scope for inference in the order passed by Ld. CIT(A). Consequently, we are inclined to dismiss the appeal of the Revenue by upholding the order of Ld. CIT(A)."*

8. The CIT(A) has restricted the addition by applying GP rate of 4.60% in line with the order of Tribunal in assessee's own case for immediately preceding Assessment Year. We see no reason to take a different view. Consequently, the ground No. 2 raised in the appeal by assessee assailing the addition by adopting GP rate of 4.6% is dismissed.



9. The assessee in ground No.1 has assailed reopening of assessment under section 147 of the Act. We find that the assessee has raised a ground challenging reopening before the CIT(A). The CIT(A)'s has passed a reasoned order in dismissing the ground against reopening of assessment. We concur with the findings of the CIT(A). We further observe that in immediately preceding year i.e. Assessment Year 2010-11, the assessee has indulged in obtaining bogus purchase bills from the same hawala dealer i.e. Miru Enterprises. The assessee accepted the validity of reopening in Assessment Year 2010-11, the facts in the impugned assessment year are identical except for the quantum of bogus purchases. We find no infirmity in the findings of CIT(A) on the issue. Accordingly, the ground No.1 of the appeal by assessee is dismissed.

10. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on Wednesday the 30<sup>th</sup> day of December, 2020.

Sd/-

(एन. के. प्रधान / N.K. PRADHAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 30.12.2020

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

Sd/-

(विकास अवस्थी / VIKAS AWASTHY)

(न्यायिक सदस्य / JUDICIAL MEMBER)



**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**