

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 एवं
श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER.
आअसं. 4541/मुं/2019 (नि.व.2011-12)
ITA NO. 4541/MUM/2019 (A.Y.2011-12)

Asstt. Commissioner of Income Tax-11(1)(1),
2nd Floor, Room No.204,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

M/s. Racheta Interiors Pvt. Ltd.,
59, Appollo Industrial Premises,
Off.Mahakali Caves Road,
Andheri (E), Mumbai 400 093
PAN: AAECR3723N

: प्रत्यर्थी/ Respondent

Assessee by : Shri Devendra Jain
Revenue by : Shri Sanjay J. Sethi
सुनवाई की तारीख/
Date of Hearing : 11/01/2021
घोषणा की तारीख /
Date of Pronouncement : 18/01/2021

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is against the order of Commissioner of Income Tax (Appeals)-18, Mumbai (in short 'the CIT(A)') dated 26/04/2019 for the assessment year 2011-12.

2. The brief facts of the case as emanating from records are : The assessee is engaged in the business of interior decorators and civil contractor. The assessee filed its return of income for the impugned assessment year on

15/09/2011 declaring total income of Rs.41,96,390/-. The return of the assessee was processed under section 143(1) of the Income Tax Act, 1961 (in short 'the Act'). Subsequently, on the basis information received from the Sales Tax Department, Government of Maharashtra that assessee has obtained bogus purchase bills amounting to Rs.5,48,211/- from M/s.Mahalaxmi Corporation, a declared hawala dealer, the assessment for assessment year 2011-12 was reopened. In reassessment proceedings, the assessee was asked to produce documents to substantiate genuineness of purchases. The assessee could neither produce any document nor confirmation from supplier of the goods to prove genuineness of purchases. The Assessing Officer made addition of the entire alleged bogus purchases. Aggrieved by the assessment order dated 31/08/2016 passed under section 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) after examining the facts of case and after considering various decisions of higher forums restricted the addition to 12.5% of the bogus purchases. Against the finding of the CIT(A) the Revenue is in appeal.

3. Shri Sanjay J. Sethi, representing the Department vehemently defended the assessment order and prayed for reversing the finding of CIT(A) in restricting the addition to 12.5% of bogus purchases. The Id.Departmental Representative placed reliance on the decision of Hon'ble Supreme Court of India in the case of N.K. Proteins Vs. DCIT in SLP No.(C) 769 of 2017 decided on 16/01/2017.

4. Shri Devendra Jain, appearing on behalf of the assessee vehemently defended the impugned order and prayed for dismissing the appeal by the Revenue. The Id.Authorized Representative of the assessee submitted that the turnover of the assessee has been accepted by the Department. The

Assessing Officer has not rejected the books of assessee . Therefore, entire alleged bogus purchases cannot be added. It is only the profit element, if any embedded in such purchases that can be added. The CIT(A) has restricted the addition to 12.5% of alleged bogus purchases, the assessee has accepted the same.

5. Both sides heard, orders of authorities below examined. The solitary issue raised in the present appeal by the Revenue is the relief granted to the assessee in respect of bogus purchases by the CIT(A). Undisputedly, the turnover declared by the assessee has been accepted by the Revenue. Without inputs the assessee could not have performed the job work. Under such like alleged bogus transactions, it is only the profit element embedded in such transaction that has to be brought to tax. (*RE: PCIT vs. Paramshakhti Distributors Pvt. Ltd. in Income Tax Appeal No.413 of 2017 decided on 15/07/2019 by Hon'ble Bombay High Court*). In the present case, CIT(A) has restricted the addition by estimating G.P at 12.5%. The assessee has accepted the same. We concur with the findings of CIT(A). Accordingly, the same are upheld and the appeal of the Revenue is dismissed being devoid of any merit.

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

Order pronounced in the open Court on Monday, the 18th day of January, 2021.

Sd/-

(S.RIFAUH RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 18/01/2021

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

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.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai