

आयकर अपीलीय 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. 2527 /मुं/2019 (नि.व.2011-12)
ITA NO. 2527/MUM/2019 (A.Y.2011-12)

M/s. Kinjal Construction Co. &
Chirag Construction Co.(Joint Venture),
101, Prathmesh Apartment,
86th Old College Road,
Dadar, Mumbai 400 028
PAN:AAAAM8709M

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

Income Tax Officer 21(2)(1),
Piramal Chamber, Lalbaug,
Mumbai 400 012

: प्रत्यर्थी/ **Respondent**

Assessee by : Shri Jitendra Singh
Revenue by : Shri Ajay Pratap Singh
सुनवाई की तारीख/
Date of Hearing : 15/10/2020
घोषणा की तारीख /
Date of Pronouncement : 11/01/2021

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-33, Mumbai (in short 'the CIT(A)') dated 01/02/2019 for the assessment year 2011-12.

2. The brief facts of the case as emanating from records are: The assessee is a civil contractor. The assessee filed its return of income for the impugned assessment year on 29/09/2011 declaring total income of Rs.19,38,660/-. The return of the assessee was processed under section 143(1) of the Income Tax Act, 1961 (in short

'the Act'). The case of assessee was selected for scrutiny and statutory notice under section 143(2) of the Act was served on the assessee on 11/08/2012. The Assessing Officer received information from DGIT(Inv.), Mumbai that the assessee has obtained accommodation entries amounting to Rs.16,05,493/- from M/s. Karan Enterprises. To verify genuineness of purchases the Assessing Officer issued notice under section 133(6) of the Act to the aforementioned dealer. The notice was returned back unserved with postal remarks 'Left'. The assessee was asked to furnish relevant documents to prove genuineness of purchases and the supplier of goods. The assessee could neither produce the supplier nor the assessee could furnish relevant documents viz. Purchase orders, delivery challans, transport bills, etc. to substantiate genuineness of purchases. The Assessing Officer made addition of entire bogus purchases. Aggrieved by the assessment order dated 26/03/2014, the assessee filed appeal before the CIT(A). The CIT(A) after considering the facts of the case concluded that since the assessee had done work in respect of Government contracts, the materials must have been utilized. The assessee must have procured material from somewhere else and obtained bills from the hawala dealer. The CIT(A) restricted the disallowance in respect of bogus purchases to 30%. Still aggrieved, the assessee is in second appeal before the Tribunal assailing the addition sustained by CIT(A).

3. Shri Jitendra Singh, appearing on behalf of the assessee submitted that the assessee is a Government contractor. The work carried out by the assessee has not been disputed by the Department. Without material the assessee could not have performed the contract job. The estimated addition made by CIT(A) is very much on the higher side. The net profit declared by the assessee during the financial year 2010-11 is 4.37%. Therefore, the addition may be restricted to net profit declared by the assessee.

4. Shri Ajay Pratap Singh, representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id.

Departmental Representative submitted that the assessee has obtained bogus purchase bills from suspicious dealer identified by the Sales Tax Department, Government of Maharashtra. During the assessment proceedings and even before the CIT(A) the assessee could neither produce documents to prove genuineness of the purchases made nor the assessee could produce supplier of goods. Even no confirmation from supplier was field by the assessee.

5. Both sides heard, orders of authorities below examined. Undisputedly, the income declared by the assessee from contract work has not been disputed by the Revenue. The assessee is a work contractor. Without material the assessee could not have completed the contract job. Ostensibly, the assessee has procured the material for performing contract job either from grey market or any other sources. Thereafter, the assessee obtained bogus purchases bills from hawala operator. The Hon'ble Jurisdictional High Court in the case of PCIT vs. Paramshakhti Distributors Pvt. Ltd. in Income Tax Appeal No.413 of 2017 decided on 15/07/2019 has upheld the proposition that it is only the profit element embedded in the bogus purchases that has to be brought to tax. Estimation of disallowance at 30% by the CIT(A) is very much on the higher side. Considering entirety of facts, estimation of GP @12% of bogus purchases would meet the ends of justice. I hold and direct accordingly.

6. In the result, appeal by assessee is partly allowed.

Order pronounced in the open Court on Monday, the 11th day of January, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 11/01/2021
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