

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.4405/M/2019
Assessment Year: 2009-10**

**ITA No.4406/M/2019
Assessment Year: 2009-10**

| | | |
|--|-----|---|
| ACIT 28(1), Room No.306, 3 rd Floor, 6 th Tower, Vashi Rly Station Complex, Vashi, Navi Mumbai, Mumbai - 400703 | Vs. | M/s. Ashtavinayak Construction, Plot No.R-478, TTC Industrial Area, MIDC, Rabale, Navi Mumbai, Mumbai - 400701 PAN: AADFA 1724G |
| (Appellant) | | (Respondent) |

**CO No.68/M/2020
(Arising out of ITA No.4405/M/2019)
Assessment Year: 2009-10**

**CO No.69/M/2020
(Arising out of ITA No.4406/M/2019)
Assessment Year: 2009-10**

| | | |
|---|-----|--|
| M/s. Ashtavinayak Construction, Plot No.R-478, TTC Industrial Area, MIDC, Rabale, Navi Mumbai, Mumbai - 400701 PAN: AADFA 1724G | Vs. | ACIT 28(1), Room No.306, 3 rd Floor, 6 th Tower, Vashi Rly Station Complex, Vashi, Navi Mumbai, Mumbai - 400703 |
| (Appellant) | | (Respondent) |

Present for:

Assessee by : Shri Bhadresh Doshi, A.R.
Revenue by : Shri Rajeev Harit, D.R.

Date of Hearing : 23.12.2020

Date of Pronouncement : 13.01.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeals by the Revenue and the cross objections by the assessee have been preferred against the order dated 20.12.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

ITA No.4405/M/2019 A.Y. 2009-10 (Revenue's appeal) & Assessee's CO No.68/M/2020 A.Y. 2009-10

2. The only issue raised by the Revenue in this appeal is against the deletion of addition by Ld. CIT(A) to the extent of 82% of the bogus purchases as against the 100% disallowance made by the AO towards the bogus purchases. The assessee has filed cross objection challenging the part confirmation of the addition to the extent of 18% of the bogus purchases.

3. At the outset, the Ld. Counsel of the assessee submitted that the issue of bogus purchases has been decided in the assessee's own case in ITA No.3821/M/2015 A.Y. 2011-12 & ors. vide order dated 09.10.2017 wherein the co-ordinate bench of the Tribunal has directed the AO to make the addition @ 12.50% of the bogus purchases. The Ld. A.R. therefore prayed that in the current year also the facts being same, a rate of 12.5% of the bogus purchases may kindly be added to the income of the assessee.

4. The Ld. D.R., on the other hand, fairly agreed that in the assessee's own case in ITA No.3821/M/2015 A.Y. 2011-12 a

rate of 12.5% has been directed by the co-ordinate bench of the Tribunal to be applied on the bogus purchases.

5. After hearing both the parties and perusing the material on record including the impugned order of co-ordinate bench of the Tribunal in ITA No.3821/M/2015 A.Y. 2011-12, we find that this issue has been decided by directing the AO to apply a GP rate of 12.50% on the total amount of bogus purchases. We, therefore, respectfully following the same, set aside the finding of the Ld. CIT(A) on this issue and direct the AO to apply a rate of 12.5% on the bogus purchases. Accordingly, the appeal of the Revenue is dismissed and cross objection of the assessee is partly allowed.

ITA No.4406/M/2019 A.Y. 2009-10 (Revenue's appeal) & Assessee's CO No.69/M/2020 A.Y. 2009-10

6. The issues raised in this appeal of the revenue and cross objection of the assessee are similar to ones as have been decided by us in ITA No.4405/M/2019 and Cross Objection No.68/M/2020 A.Y. 2009-10 in which we have directed the AO to apply a GP rate of 12.5% on the bogus purchases. Our finding on ITA No.4405/M/2019 and Cross Objection No.68/M/2020 A.Y. 2009-10 would, mutatis mutandis, apply to this appeal No.4406/M/2019 and CO No.69/M/2020 A.Y. 2009-10 as well. Accordingly, appeal of the Revenue is dismissed and CO of assessee is partly allowed.

7. In the result, the appeals of the Revenue are dismissed and the cross objections of the assessee are partly allowed.

Order pronounced in the open court on 13.01.2021.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 13.01.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.