

आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

(Hearing through Video Conferencing Mode)

आयकरअपील सं./ I.T.A. No.2762/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)

&

आयकरअपील सं./ I.T.A. No.2763/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

Income Tax Officer, Ward-2(1) 2 nd Floor, Mohan Plaza Bldg Wayle Nagar, Khadakpada, Kalyan(W)-421 301	बनाम / Vs.	Gul Manoharlal Makhijani Prop of M/s Poonam Construction, 6, Red Rose Society Opp-Chopra Court Ulhas Nagar-421 003
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAZPM-5806-H		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
Assessee by	:	None
Revenue by	:	Shri T.S. Khalsa- Ld. Sr. DR
सुनवाई की तारीख/ Date of Hearing	:	03/02/2021
घोषणा की तारीख / Date of Pronouncement	:	03/02/2021

आदेश / ORDER

Per Bench

1. Aforesaid appeals by revenue for Assessment Years [in short referred to as ‘AY’] 2009-10 & 2010-11 contest separate orders of learned first Appellate Authority. However, the facts as well as issues are identical in both the appeals and therefore, the appeals

were heard together and are now being disposed-off by way of this common order for the sake of convenience & brevity.

2. The appeal for Assessment Year (AY) 2009-10 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-3, Thane [in short referred to as 'CIT(A)'], Appeal No. 10070-THN/2015-16 dated 22/02/2019 which has restricted the additions on account of *alleged bogus purchases* to the extent of 12.5%.

3. During hearing, though none appeared for assessee but the material on record was sufficient for disposal of the appeals and therefore, the matter was proceeded with for adjudication after hearing Ld. DR, who pleaded for restoration of additions as made by the Ld. Assessing Officer (AO) in an assessment framed u/s 143(3) r.w.s. 147, vide order dated 05/03/2015. The assessee being resident individual is stated to be engaged in the business of civil construction under proprietary concern namely M/s. Poonam Construction.

4. Pursuant to receipt of certain information received from Sales Tax Department, Maharashtra, it transpired that the assessee made aggregate purchases of Rs. 49.72 Lacs from 9 suspicious dealers, the details of whom have already been extracted in para-4 of the assessment order. Accordingly, the assessee was directed to substantiate the purchase transactions. In defense, the assessee submitted that the purchases were supported by valid invoices and the payments were through account channels. The ledger extracts of the suppliers along with their confirmation of accounts as well as Permanent Account Numbers was also submitted. However, notices issued u/s 133(6) to these parties was returned back

unserved by the postal authorities and therefore, a conclusion was drawn that the purchases made by the assessee from these suppliers were bogus. Finally, these purchases were disallowed as unproved and unexplained expenditure within the meaning of Section 69C of the Act.

5. Before Ld. CIT(A), the assessee reiterated that the purchases were genuine and drew attention to the documentary evidences furnished by the assessee in support of these transactions. The evidences furnished by the assessee were subject to remand proceedings, wherein the Ld. Assessing Officer reiterated that the notices issued to the parties remained unserved by the postal authorities and the assessee failed to produce the parties for substantiating the transactions. After going through the facts of the case, the Ld. CIT(A) concluded that it was a case, where the goods were received from the parties other than persons who had issued the bills for such goods. The goods must have been purchased from grey market and therefore, the chances of purchases cost being inflated could not be ruled out. Therefore, Ld. AO was directed to restrict the additions to the extent of 12.5% of these purchases as held in numerous decisions of the Tribunal. Aggrieved, the revenue is in further appeal before us.

6. After due consideration of factual matrix as enumerated in the preceding paragraphs, it is quite evident that the assessee was engaged in the business of civil construction which would require consumption of material. The purchase transactions carried out by the assessee with suspicious suppliers were evidenced by copies of invoices and the payments were through banking channels. The

confirmation of accounts as well as PAN of the suppliers was duly furnished. The sales turnover achieved by the assessee was not disputed by Ld. AO. At the same time, the assessee failed to produce any of the suppliers for confirmation of accounts and notices issued u/s 133(6) did not elicit satisfactory response. Therefore, it was a fit case for estimation of additions on these suspicious purchases. In our considered opinion, Ld.CIT(A) has clinched the issue in the correct perspective. The estimation of 12.5% was quiet fair and reasonable and the same do not require any interference on our part. Therefore, by confirming the stand of Ld. CIT(A), we dismiss the appeal.

7. Facts as well as issues are pari-materia the same in AY 2010-11 wherein the assessee was saddled with additions of Rs.96.98 Lacs on account of suspicious purchases. The Ld. CIT(A) restricted the same to 12.5% applying similar reasoning and logic. Aggrieved, the revenue is in further appeal before us with identical grounds. Since, the facts as well as issues are identical as in AY 2009-10, applying adjudication of that year, we dismiss this appeal also.

8. Finally, both the appeals stands dismissed.

Order pronounced on 03rd February, 2021.

Sd/-
(Mahavir Singh)
उपाध्यक्ष / **Vice President**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 03/02/2021
Sr.PS, Kasarla Thirumalesh

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.