

आयकर अपीलीय अधिकरण  
मुंबई पीठ "एस एम सी", मुंबई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री नबीन कुमार प्रधान, लेखा सदस्य के समक्ष  
BEFORE VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI N.K.PRADHAN, ACCOUNTANT MEMBER

आअसं. 5150/मुं/2019 (नि.व. 2011-12)  
ITA NO.5150/MUM/2019(A.Y.2011-12)

The ACIT-17(3),  
Room No.137, 1<sup>st</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. STG Infrastructure,  
1<sup>st</sup> Floor, Bharat House,  
104, Mumbai Samachar Marg,  
Mumbai 400 023  
PAN: AAAPV3045L

..... प्रतिवादी/Respondent

Assessee by : None  
Revenue by : Shri Sanjay J. Sethi

सुनवाई की तिथि/ Date of hearing : 01/03/2021  
घोषणा की तिथि/ Date of pronouncement : 08/03/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-28, Mumbai ( in short 'the CIT(A)') dated 30/05/2019 for the assessment year 2011-12.

2. The brief facts of the case as emanating from records are: The assessee is a partnership firm. On the basis of information received from Sales Tax Department,

Government of Maharashtra, by the DGIT(Investigation), Mumbai, the assessment for assessment year 2011-12 in the case of assessee was reopened. As per information received, the assessee had obtained bogus purchase bills aggregating to Rs.4,65,993/- from hawala dealers. The Assessing Officer after coming to the conclusion that the assessee has failed to prove genuineness of the purchases and also the suppliers of the goods made addition of the entire alleged bogus purchases. Aggrieved by the assessment order dated 14/12/2018 passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 ( in short 'the Act'), the assessee filed appeal before the CIT(A). The CIT(A) after examining the facts and considering the submissions of the assessee, restricted the addition to 12.5% of the bogus purchases. Now, the Revenue is in appeal assailing the findings of CIT(A) in reducing the addition from Rs.4,65,993/- to Rs.58,250/- i.e. 12.5% of the total bogus purchases.

3. Shri Sanjay J. Sethi, representing the Department submitted that the assessee failed to discharge its onus in proving genuineness of the purchases. Neither any documentary evidence was filed to show trail of goods nor the dealers from whom alleged purchases were made, were produced before the Assessing Officer. The Id. Departmental Representative prayed for reversing the findings of CIT(A) and upholding the assessment order. The Id. Departmental Representative further contended that though the tax effect involved in the appeal is less than the monetary limit specified vide CBDT Circular No. 17/2019, dated 08-08-2019, but the case of assessee falls under exceptions specified in para 10(e) of Circular No. 03 of 2018 dated 11/07/2018 and amended on 20/08/2018.

4. We have heard the submissions made by Id. Departmental Representative and have examined the orders of authorities below. The Revenue in appeal has assailed the order of CIT(A) in restricting the addition on account of bogus purchases to 12.5% of such purchases as against 100% addition made by Assessing Officer.

Undisputedly, the Revenue had accepted the sales turnover declared by the assessee. Without purchases there cannot be sales. The Hon'ble Bombay 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 held that it is only the profit embedded in bogus purchases that has to be taxed and not the entire purchases. We find that the estimation of GP at 12.5% on alleged bogus purchases by the CIT(A) is in line with the decision of Hon'ble Jurisdictional High Court(supra). We find no infirmity in the impugned order. The same is upheld and appeal by the Revenue is dismissed being devoid of any merit.

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

Order pronounced in the open court on Monday, the 8<sup>th</sup> day of March, 2021.

Sd/-

(N.K.PRADHAN)

लेखा सदस्य /ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 08/03/2021

Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषित Copy 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.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)  
ITAT, Mumbai