

आयकर अपीलिय 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. 5228/मुं/2019 (नि.व. 2010-11)
ITA NO.5228/MUM/2019(A.Y.2010-11)

ACIT-27(2),
Room No.420, 4th Floor,
Tower No.6, Vashi Railway Station Complex,
Vashi, Navi Mumbai -400 703

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Mehta Vet Chem,
203,Venus Apartment, Nathpai Nagar,
Ghatkopar East, Mumbai -400 077.
PAN:AAIFM3834M

..... प्रतिवादी/Respondent

Assessee by : None
Revenue by : Ms.Smita Verma

सुनवाई की तिथि/ Date of hearing : 09/03/2021
घोषणा की तिथि/ Date of pronouncement : 11/03/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)- 25, Mumbai (in short 'the CIT(A)') dated 27/05/2019 for the assessment year 2010-11.

2. Ms.Smita Verma representing the Department submitted that enquiries conducted in the case of one Yogesh Dilip Waghela by the Investigation Wing it transpired that large credits were received in his bank account from various

beneficiaries. Later on, cash was withdrawn from the bank account. After analysing the bank statement of M/s. Brown Pharmaceuticals & Chemicals, one of the concern controlled by Yogesh Dilip Waghela with HDFC Bank, Orlem Branch Malad(West), Mumbai a credit entry of Rs,3,16,200/- on 17/03/2010 was found. This was accommodation entry for alleged purchase by assessee through RTGS. Subsequently, the cash was withdrawn. On analysing the modus operandi adopted by Yogesh Dilip Waghela it is evident that the amount transferred by the assessee through banking transaction has travelled back to the assessee in cash. The Assessing Officer rejected assessee's books of account and disallowed the expenditure of Rs.3,16,200/- being bogus transaction and made addition under section 37 of the Income Tax Act, 1961 (in short 'the Act'). The assessee carried the issue before the CIT(A). The CIT(A) in principle upheld the findings of Assessing Officer i.e. transaction being bogus, but restricted the addition to 12.5% of the alleged bogus transaction. Hence, the present appeal by the Revenue. The Id.Departmental Representative submitted that once the transaction is held to be bogus and has been disallowed under section 37 of the Act there is no question of estimating any G.P on such transaction.

3. We have heard the submissions made by Id.Departmental Representative and have examined the orders of authorities below. A perusal of the assessment order shows that the assessment for assessment year 2010-11 in the case of assessee was reopened on the basis of investigation conducted by the Department in the case of Yogesh Dilip Waghela, an accommodation entry provider. The modus operandi of Yogesh Dilip Waghela as narrated in the assessment order, is that the amount was credited in his bank account through banking channels by the beneficiaries and the same amount was withdrawn in cash. The assessee is a dealer in pharmaceuticals, chemicals and animal feed supplements. The sales turnover declared by the assessee has not been disputed by the Revenue. Without purchases there cannot be sales. The CIT(A) in the impugned order has observed that the assessee has been

able to establish one to one link between purchases and the sales. The possibility of purchasing goods from grey market and thereafter obtaining matching purchase bills from M/s. Brown Pharmaceuticals & Chemicals, cannot be ruled out . The CIT(A) estimated the profit embedded in bogus transaction at 12.5%. The estimation of profit on bogus purchases by CIT(A) is in line with the judgment of 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 by Hon'ble Bombay High Court. The order of CIT(A) warrants no interference and the same is upheld. The appeal by Revenue is dismissed sans merit.

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

Order pronounced in the open court on Thursday the 11th day of March, 2021.

Sd/-

(N.K.PRADHAN)

लेखा सदस्य /ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 11/03/2021

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