

## आयकर अपीलिय अधिकरण "SMC" न्यायपीठ मुंबई

### **IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI**

श्री विकास अवस्थी, न्यायिक सदस्य एवं श्री एन. के. प्रधान, लेखा सदस्य के समक्ष

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND  
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 5392/Mum/2019

(निर्धारण वर्ष / Assessment Year 2011-12)

The Income-tax Officer Ward 15(2)(4) Room No. 360, Aayakar Bhavan, M.K. Road, marine Lines, Mumbai-400 020	बनाम/ Vs.	M/s Precise Conchem Pvt. Ltd. 202, The Great Eastern Chambers CHS Ltd., Plot No.28, Sector-11, CBD Belapur, Navi Mumbai-400 614
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAACP8516C		

अपीलार्थी की ओर से Appellant by	:	Ms. Smita Verma, DR
प्रत्यर्थी की ओर से Respondent by	:	Ms. Hiral Sejal, AR

सुनवाई की तारीख / Date of hearing:	11.03.2021
घोषणा की तारीख / Date of pronouncement:	16.03.2021

### **आदेश / ORDER**

श्री विकास अवस्थी, न्यायिक सदस्य के द्वारा

**PER VIKAS AWASTHY, JM:**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-24, Mumbai [in short 'the CIT(A)'] dated 20<sup>th</sup> May, 2019 for the AY 11-12.

2. Ms. Smita Verma representing the department submitted that during the period relevant to AY under appeal, the assessee had obtained bogus purchase bills amounting to Rs.15,00,085/- from M/s Sivamani Traders Private Limited, a declared hawala operator by the



Sales Tax Department, Government of Maharashtra. The assessee failed to discharge its onus in proving genuineness of the purchase and the supplier. Since, the assessee is engaged in the manufacturing process, therefore, one to one relation with the purchase and sales could not be established. Therefore, the AO made addition of the entire bogus purchases. The assessee filed appeal against the said addition. The CIT(A) following the decision rendered in the case of CIT Vs. Simit P. Sheth (2013) 356 ITR 451 (Guj), restricted the addition to 12.5% of the bogus purchases. The learned Departmental Representative submitted that the decision in Simit P. Sheth (supra) is in respect of trading of goods and in the present case, the assessee is a manufacturer, therefore, the ratio laid down in the said decision would not apply in the facts of the present case. The learned DR prayed for restoring 100% disallowance of bogus purchases. To buttress her contention, placed reliance on the decision of Hon'ble Supreme Court of India in the case of NK Proteins Ltd vs. DCIT (2017) 292 CTR 354 (SC).

3. On the other hand, Shri Hiral Sejpal appearing on behalf of the assessee vehemently supported the findings of the CIT(A). The learned AR submitted that during assessment proceedings, the assessee had furnished various documents viz. GRN, goods inspection report, lorry receipts, details of payments, invoices etc. The assessee was able to establish purchase of goods and trail of goods so purchased. Despite that the AO made addition of 100% alleged bogus purchase. In first appellate proceedings, the CIT(A) after appreciating the facts and documents on record restricted the addition to 12.5% of the bogus



purchases. Though no addition was warranted in the case of assessee, however, the assessee accepted the same to avoid further litigation.

4. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee has allegedly obtained bogus purchase bills from hawala operator. The AO made addition of the entire such bogus purchases. The assessee is engaged in manufacturing activity. Undisputedly, the sales turnover declared by the assessee has been accepted by the Revenue. Without purchase, the manufacturing activity cannot be carried out. Although, one to one correlation between purchases and sales after manufacturing process cannot be established. However, the processing activities cannot be carried out unless, there are inputs. The CIT(A) after considering the facts of the case restricted the disallowance to 12.5% of the bogus purchases. We find no infirmity in the impugned order hence, the same is upheld and the appeal by Revenue is dismissed, being devoid of any merit.

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

Order pronounced in the open court on Tuesday the 16<sup>th</sup> day of March, 2021.

Sd/-

(एन. के. प्रधान / N.K. PRADHAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(विकास अवस्थी / VIKAS AWASTHY)

(न्यायिक सदस्य / JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 16.03.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS



**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai