

आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“H” 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.6973/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)

ITO-6(3)(4) R.No.576 Aaykar Bhawan, M.K.Road Mumbai – 400 020	बनाम/ Vs.	M/s Krishna Solvechem Ltd. M-2, Srinivas Building 382/384, Narsi Natha Street Mumbai – 400 009
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAACK-7702-J		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Malav Sheth – Ld. AR
Revenue by	:	Shri Gurbinder Singh-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	21/04/2021
घोषणा की तारीख / Date of Pronouncement	:	03/05/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment year [AY in short] 2009-10 contest the order of Ld. Commissioner of Income Tax (Appeals)-12, Mumbai [in short CIT(A)] dated 17/07/2019 which has provided certain relief to the assessee on account of *alleged bogus purchases*.

2. We have carefully heard the rival submissions and perused relevant material on record. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3.1 The material facts are that the assessee being resident corporate assessee stated to be engaged as dealer of chemical was assessed for the year under consideration u/s 143(3) r.w.s. 147 on 30/03/2015. The original return filed by the assessee was processed u/s 143(1). However, pursuant to receipt of certain information from DGIT (Inv.), Mumbai, it transpired that the assessee made suspicious purchases aggregating to Rs.102.83 Lacs from three entities as detailed in the assessment order. The three suppliers were listed as hawala dealers by Sales Tax Authorities, Maharashtra. Accordingly, the case was reopened as per due process of law and the assessee was required to file requisite details to substantiate the purchases.

3.2 Though the assessee filed ledger extracts, details of payment and copies of invoices, however, it failed to provide transportation details. The notices issued u/s 133(6) to confirm the transactions did not elicit satisfactory response. Besides the three suppliers, such notices u/s 133(6) was issued to four other suppliers from whom the assessee had made purchases of Rs.214.87 Lacs. However, the notices remained unserved. The assessee failed to produce any of the suppliers. Consequently, an opinion was formed by Ld. AO that the assessee could not discharge the onus of establishing these purchases. Finally, the total purchases of Rs.317.70 Lacs made by the assessee from seven suppliers were added back to its income while framing the assessment.

4. Upon further appeal, the assessee filed additional evidences u/r 46A which were subjected to remand proceedings. After considering the

remand report, Ld. CIT(A) noted that the purchases of Rs.198.62 Lacs out of purchases of Rs.214.87 Lacs were accepted by Ld. AO. On the balance purchases of Rs.119.07 Lacs, relying upon the decision of Hon'ble Gujarat High Court in **CIT V/s Simit P. Sheth (356 ITR 451)**, Ld. CIT(A) estimated additions of 12.5%. Aggrieved, the revenue is in further appeal before us. It appears that the assessee has accepted the verdict of Ld. CIT(A).

5. Going by the factual matrix as enumerated in the orders of lower authorities, we find that the issue has rightly been clinched in proper perspective by Ld. CIT(A). The Sales Turnover was not in doubt and the assessee was in possession of primary purchase documents. The payment to the supplier was through banking channels. There could be no sale without actual purchase of material keeping in view the assessee's nature of business. The facts of the case made it a fit case to estimate the profit element embedded in these transactions. The estimation of 12.5% as made by Ld. CIT(A) was quite fair and reasonable on the facts of the case. Therefore, concurring with findings of Ld. CIT(A) in the impugned order, we dismiss the appeal.

6. The appeal stands dismissed.

Order pronounced on 3rd May, 2021.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / **Vice President**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :
Sr.PS, Jaisy Varghese

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.