

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 4452/मुं/2019 (नि.व.2010-11.)
ITA NO.4452/MUM/2019 (A.Y.2010-11)
आअसं. 4453/मुं/2019 (नि.व.2011-12)
ITA NO.4453/MUM/2019 (A.Y.2011-12)

ITO-28(2)(1),
Room No.326, 3rd Floor,
Tower No.6, Vashi Rly. Station Complex,
Vashi, Navi Mumbai 400 703

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Livaco Industries,
Plot No. R-481, TTC Industrial Area,
MIDC, Rabale, Navi Mumbai 400 701
PAN: **AAFL 4263E**

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Sanjay J. Sethi

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 07/01/2021

घोषणा की तिथि/ Date of pronouncement : 05/04/2021

आदेश/ ORDER

These two appeals by the Revenue are directed against the orders of Commissioner of Income Tax (Appeals) -26, Mumbai [in short 'the CIT(A)] for the assessment years 2010-11 and 2011-12, respectively. Both the impugned orders are of even date i.e. 05/04/2019. Since, similar grounds have been raised by the Revenue in both the appeals and the issue germane to addition is identical, these appeals are taken up together for adjudication and are decided vide this common order.

2. Shri Sanjay J. Sethi representing the department submitted that during the period relevant to the assessment year 2010-11 the assessee obtained bogus purchase bills amounting to Rs.18,77,741/- from various dealers declared as hawala operators by the Sales Tax Department, Government of Maharashtra. During assessment proceedings, the assessee failed to prove genuineness of purchases and the dealers. The Assessing Officer made addition of the entire bogus purchases. The assessee filed appeal against assessment order dated 15/3/2016 passed under section 143 (3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act'). The CIT(A) restricted the addition to 12.5% of bogus purchases. The Id. Departmental Representative submitted that since the assessee failed to produce documentary evidence to show trial of goods and consumption of raw material the Assessing Officer rightly made addition of the entire inflated purchases. The Id. Departmental Representative prayed for reversing the findings of CIT(A) and restoring the addition made in assessment order.

The Id. Departmental Representative submitted that similar is the situation in assessment year 2011-12. The assessee made bogus purchases to the tune of Rs.9,97,646/-from suspicious dealers. The Assessing Officer made addition of the entire bogus purchases as the assessee failed to substantiate genuineness of the purchases and the dealers.

3. The submissions made by Id. Departmental Representative heard and orders of authorities below examined. The assessee is engaged in manufacturing of chemical equipment and fabrication work. During the period relevant to assessment year 2010-11 the assessee allegedly obtained bogus purchase bills aggregating to Rs.18,77,741/- and in the period relevant to assessment year 2011-12 to the extent of Rs.9,97,646/-. Undisputedly, the assessee failed to discharge its onus in proving genuineness of purchases and authenticity of the dealers.

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The Assessing Officer has accepted the sales turnover declared by the assessee, the logical corollary is that without purchases there cannot be production/sales, hence, the entire alleged bogus purchases cannot be disallowed. The Hon'ble Jurisdictional High Court in the case *PCIT vs Pramashakti Distributors Pvt. Ltd. in Income Tax Appeal 413 of 2017 decided on 15/7/2019* has held that only the profit element embedded in bogus purchases can be taxed. The entire alleged bogus purchases cannot be added. The CIT(A) after appreciating entire facts including the GP declared by the assessee has estimated GP on bogus purchases at 12.5% in the impugned assessment years. I concur with the findings of CIT(A). The impugned order is upheld and the appeals by Revenue are dismissed, sans-merit.

4. In the result, both appeals by the Revenue are dismissed.

Order pronounced in the open Court on Monday, the 05th day of April, 2021.

Sd./-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 05/04/2021

Vm, Sr. PS (O/S)

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प्रतिलिपि अग्रेषितCopy 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.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai