

आयकर अपीलिय 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. 5637/मुं/2019 (नि.व.2011-12)
ITA NO.5637/MUM/2019 (A.Y.2011-12)

ITO, Ward-1(4),
R. No. 11, 6st Floor, B Wing,
Wagale Industrial Estate,
Thane (W) - 400604

..... अपीलार्थी /Appellant

बनाम Vs.

M/s J.M.C. Equipments & Co.
Plot No. B-26, Road No.22,
Opp. SBI, Wagle Industrial Estate,
Thane (W),-400604.

PAN: AACFJ5525F

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Sushil Kumar Mishra

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 30/03/2021

घोषणा की तिथि/ Date of pronouncement : 28/05/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-1, Thane [hereinafter referred to as 'the CIT(A)'] dated 06.06.2019 for the Assessment Year (AY) 2011-12.

2. The brief facts of the case as emanating from the records are: The assessment in the case of assessee for the AY 2011-12 was re-opened on the basis of information received from the Sales Tax Department, Government of

Maharashtra that the assessee has obtained bogus purchase bills amounting to Rs. 2,39,117/- from two hawal operators i.e.

(1) Shri Raj Tilak Trading Company	Rs. 2,25,576/-
(2) Rehbar Enterprises	Rs. 13,541/-

3. During assessment proceedings, the assessee failed to discharge its onus in proving genuineness of the purchases and the dealers. The notices sent to the dealers under section 133(6) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') were returned back unserved by the postal authorities with remarks "not known". No confirmations were either filed by the assessee from the dealers. Further, the assessee could not furnish necessary documents viz. transport receipts, inward register etc. to prove trail of goods. The Assessing Officer (AO) made addition of entire alleged bogus purchases.

Aggrieved by the assessment order dated 07.03.2014 passed under section 143(3) read with section 147 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) after examining the facts, restricted the addition to 12.5% of the bogus purchases. Now, the Revenue is in appeal against the relief granted by the CIT(A) to the assessee.

4. Shri Sushil Kuamr Mishra representing the Department vehemently defended the assessment order and prayed for reversing the findings of CIT(A). The Id. DR submitted that the assessee could not prove genuineness of the purchases and the dealers, therefore, entire bogus purchases were added by the AO. In support of his submissions, the Id. AR placed reliance on the decision

rendered in the case of N.K. Proteins in Tax Appeal No. 242 of 2003 decided on 20.06.2016.

5. Submissions made by Id. DR heard, orders of authorities below examined. The assessee is in the business of engineering and fabrication, the assessee allegedly obtained bogus purchase bills amounting to Rs. 2,39,117/- from dealers declared as hawala operators by the Sales Tax Department, Government of Maharashtra. Undisputedly, the AO accepted the sales turnover declared by the assessee. Without purchases/inputs there cannot be sales, therefore, the entire alleged bogus purchases cannot be added. It is only the profit element embedded in such purchases that has to be brought to tax (Re: PCIT v/s Paramshakti Distributors Pvt. Ltd., ITA No. 413/2017 decided on 15.07.2019). Thus, the AO erred in making addition of entire alleged bogus purchases. The CIT(A) estimated Gross Profit (GP) @ 12.5% on bogus purchases and restricted the addition to Rs. 29,890/-. I find no infirmity in the impugned order, the same is upheld and the appeal of Revenue is dismissed, sans merit.

Order pronounced in the open court on **Friday**, the **28th** day of May, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 28/05/2021

SK, PS

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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai