

**आयकर अपीलीय अधिकरण “एक-सदस्य मामला ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, MUMBAI**

**माननीय श्री विकास अवस्थी, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI VIKAS AWASTHY, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
 (Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.5821/Mum/2019  
 (निर्धारण वर्ष / Assessment Year: 2010-11)

<b>ITO-32(3)(4)</b> Room No.735, 7 <sup>th</sup> Floor Kautilya Bhawan, BKC Bandra(E), Mumbai - 400051	<b>बनाम/ Vs.</b>	<b>Surface Road Constructions</b> D-30/004, Yogi Vaibhav Society Yogi Nagar, Borivali(W) Mumbai – 400 091
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAWFS-7410-A</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )
अपीलार्थीकी ओरसे/ <b>Appellant by</b>	:	Shri Sanjay Sethi-Ld.DR
प्रत्यर्थीकी ओरसे/ <b>Respondent by</b>	:	Shri Kamlesh N.Doshi-Ld. AR
सुनवाईकी तारीख/ <b>Date of Hearing</b>	:	09/06/2021
घोषणाकी तारीख / <b>Date of Pronouncement</b>	:	09/06/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member): -**

1. Aforesaid appeal by revenue for Assessment year [AY in short] 2010-11 contest the order of Ld. Commissioner of Income Tax (Appeals)-46, Mumbai [in short CIT(A) ] dated 17/05/2019 which has provided certain relief to the assessee on account of *alleged bogus purchases*.

2. Having heard rival submissions and after going through material on record, our adjudication to the appeal would be as under.

3.1 The material facts are that the assessee being resident firm stated to be engaged in manufacturing of bitumen items / ready mix concrete was assessed for the year under consideration u/s 143(3) r.w.s. 147 on 13/01/2016. The original return filed by assessee was processed u/s 143(1). However, pursuant to receipt of certain information from DGIT (Inv.) / Sales Tax Department, Mumbai, it transpired that the assessee procured accommodation purchases bills of Rs.118.88 Lacs from give entities as detailed in the assessment order. Accordingly, the case was reopened as per due process of law and the assessee was required to file requisite details to substantiate these purchases.

3.2 In support of purchases, the assessee furnished certain documents, however, finding that the assessee could not substantiate the purchases, Ld. AO estimated an addition of 14% against these purchases which was same as made in during AY 2009-10.

4. The Ld. CIT(A), inter-alia relying upon the decision of Hon'ble Gujarat High Court in **CIT V/s Simit P. Sheth (38 Taxmann.com 385)**, restricted the additions to 8% which was nothing but applicable VAT rate plus 4% estimate margin. Aggrieved, the revenue is in further appeal before us.

5. Going by the factual matrix as enumerated in the orders of lower authorities, we find that assessee's Sales Turnover was not in doubt and the assessee was in possession of primary purchase documents. The payment to the suppliers 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 Ld. CIT(A), after due consideration of assessee's submissions as well as considering applicable VAT rates, estimated the additions @8% which is more than enough to take care of the leakage of revenue. Therefore, the estimation could not be termed as unjustified, in any manner. Finding no reason to interfere in the impugned order, we dismiss the appeal.

6. The appeal stands dismissed.

*Order pronounced on 09<sup>th</sup> June, 2021.*

**Sd/-**

**(Vikas Awasthy)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 09/06/2021  
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.**