

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी"
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.273/मुं/2020 (नि.व.2010-11)
ITA NO. 273/MUM/2020 (A.Y.2010-11)
आअसं.274/मुं/2020 (नि.व.2011-12)
ITA NO. 274/MUM/2020 (A.Y.2011-12)

Shreekar Polyester Pvt. Ltd.
Gr.Floor, 147, Cavel X Lane No.5,
Dr.Viegas Street,
Mumbai 400 002
PAN: AADCS 8861P

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

Income Tax Officer 4(3)(4),
Room No.637, 6th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

: प्रत्यर्थी/ Respondent

Appellant by : Shri B.P.Purohit
Respondent by : Shri Sanjay J. Sethi
सुनवाई की तारीख/
Date of Hearing : 21/06/2021
घोषणा की तारीख /
Date of Pronouncement : 22/06/2021

आदेश/ ORDER

These two appeals by the assessee are directed against the order of Commissioner of Income Tax(Appeals)-9, Mumbai [in short 'the CIT(A) 'for the assessment year 2010-11 and 2011-12, respectively. Both the impugned orders are of even date i.e. 15/11/2019. Since, the facts germane to the grounds raised in both these appeals are identical and the assessee has raised similar set of grounds in these

appeals, the appeals are taken up together for adjudication and are disposed of by this common order.

ITA No.273/Mum/2020-A.Y.2010-11

2. Shri B.P. Purohit appearing on behalf of the assessee submitted that the assessee is engaged in dyeing of yarn. In assessment proceedings, the Assessing Officer held that the assessee has obtained bogus purchase bills aggregating to Rs.25,94,587/- in assessment year 2010-11 from suspicious dealers. The assessee in order to substantiate genuineness of purchases furnished ledger accounts, purchase invoice, bank statements, etc. However, the Assessing Officer disbelieved the same and made addition of entire alleged bogus purchases. Against assessment order dated 22/03/2012 passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') the assessee filed appeal before the CIT(A). The CIT(A) recorded that sales declared by the assessee have been accepted by the Assessing Officer and hence, entire purchases cannot be doubted. However, the CIT(A) merely on presumption that the assessee has failed to prove evidences with regard to actual consumption of goods upheld the findings of Assessing Officer in entirety. The Id. Authorized Representative for the assessee submitted that the entire addition should be deleted as assessee has furnished sufficient evidence to prove genuineness of purchases. The Id. Authorized Representative for the assessee submitted that the assessee has declared G.P of 6.68% in assessment year 2010-11, without prejudice to first contention, if at all addition has to be made it should be restricted to the G.P declared by assessee.

3. On the other hand, Shri Sanjay J. Sethi representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The Id. Departmental Representative submitted that the assessee failed to discharge its onus in proving genuineness of purchases and the dealers. The assessee failed to produce the dealers from whom suspicious purchases were made. Some of the dealers from whom assessee has abotained bills have admitted that bills were issued against cheque payments. Cash was withdrawn from Banks and cash is returned thereafter deducting

commission. The statement of Shri Tarun Sanghvi, the Director of the assessee company was recorded, wherein he admitted that he can produce consumption records. However, no such records were furnished. Further, the assessee failed to produce documentary evidence to show transportation of goods from suspicious dealers. The Id. Departmental Representative vehemently prayed for sustaining the impugned order and dismissing appeal of the assessee.

4. Both sides heard, orders of authorities below examined. Undisputedly, the assessee failed to discharge its onus in proving genuineness of purchases and the dealers from whom alleged bogus purchases were made. Documents viz. Octroi receipts, stock register, consumption records, etc. were not produced by the assessee before the authorities below to show trail of goods. At the same time we observe that the Assessing Officer has accepted the sales turnover and closing stock declared by the assessee. Without purchases there cannot be processing of yarn, therefore, entire alleged bogus purchases cannot be disallowed. The possibility is that the assessee made purchases from grey market and obtained bogus purchase bills from hawala operators. It is only the profit element embedded in such transactions that has to be brought to tax.[Ref. PCIT vs. Paramshakhti Distributors Pvt. Ltd. in Income Tax Appeal No.413 of 2017 decided on 15/07/2019 by Hon'ble Bombay High Court.]. The Id. Authorized Representative for the assessee submitted that the G.P declared by the assessee in assessment year 2010-11 is 6.68%. However, on perusal of assessment order it is observed that the G.P has been worked out to be 8.12%. The same has not been disputed by the assessee either before the First Appellate Authority or the Tribunal. Taking into consideration entirety of facts, I am of considered view that to meet ends of justice it would be fair to restrict disallowance on unproved purchases to 10%. The ground No.1 of the appeal is thus, partly allowed in the aforesaid terms.

5. In ground No.2 of the appeal the assessee has assailed validity of assessment. Since no arguments were advanced on this ground, the same is dismissed.

6. In ground No.3 of appeal, the assessee has assailed charging of interest under section 234B and 234C of the Act. Since, charging of interest is mandatory and consequential this ground requires no separate adjudication.

7. The grounds No. 4 and 5 of appeal are general in nature, hence, require no adjudication.

8. In the result, appeal by the assessee is partly allowed.

ITA NO.274/MUM/2020- A.Y. 2011-12:

9. Both sides are unanimous in stating that the facts and grounds of appeal in assessment year 2011-12 are identical to assessment year 2010-11. A perusal of the assessment order reveals that the addition on account of bogus purchases amounting to Rs.1,29,835/- has been made by the Assessing Officer in similar manner. As per the assessment order the G.P in assessment year 2011-12 is 9%. The CIT(A) has upheld the findings of Assessing Officer for the reasons similar to assessment year 2010-11. Since, facts in both the impugned assessment years are identical, the findings given while adjudicating the appeal of assessee for assessment year 2010-11 would mutatis mutandis apply to assessment year 2011-12. Consequently, the appeal of assessee for 2011-12 is partly allowed for parity of reasons.

10. **To sum up appeal of the assessee in assessment year 2010-11 and 2011-12 are partly allowed.**

Order pronounced in the open Court on Tuesday the 22nd day of June, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 22/06/2021
Vm, Sr. PS(O/S)

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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai