

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. 5503/मुं/2019 (नि.व.2011-12)
ITA NO.5503/MUM/2019 (A.Y.2011-12)

ITO Ward-2(4),
2nd Floor, Mohan Plaza Building,
Wayle Nagar, Khadakpada,
Kalyan (West)-421301.

..... अपीलार्थी /Appellant

बनाम Vs.

M/s Sunrise Industries
Plot No. D/10, Murbad,
Thane-421401.

PAN: **ABEFS8084M**

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Sushil Kumar Mishra

प्रतिवादी द्वारा/Respondent by : Sh. Deepak Raje

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

घोषणा की तिथि/ Date of pronouncement : 10/06/2021

आदेश / ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is against the order of Commissioner of Income Tax (Appeals)-3, Thane [hereinafter referred to as 'the CIT(A)'] dated 06.06.2019 for the Assessment Year (AY) 2011-12.

2. Shri Deepak Rajee appearing on behalf of the assessee submitted that the assessment in the case of assessee was re-opened and addition of Rs. 3,02,787/- was made on account of bogus purchases from two dealers i.e.

- | | | |
|------|---------------------------|----------------|
| (i) | Skand Industries | Rs. 2,49,315/- |
| (ii) | Samir Trading Corporation | Rs. 53,472/- |

3. The Id. AR submitted that the assessee could not appear before the Assessing Officer (AO) and furnish evidence to prove genuineness of the sales, therefore, the AO made addition of the entire alleged bogus purchases. In First Appellate Proceedings, the assessee furnished relevant documents to prove genuineness of the purchases. The CIT(A) sought remand report from the AO on the evidences filed by the assessee. After considering the submissions of the assessee and the remand report, the CIT(A) restricted the addition to 20% of the alleged bogus purchases, the assessee has accepted the same.

4. Shri Sushil Kumar Mishra representing the Department strongly supported the assessment order. The Id. DR submitted that the assessee failed to appear before the AO despite service of notices, no documentary evidence was filed by the assessee to discharge its onus in proving genuineness of the purchases and the dealers. The AO rightly disallowed entire bogus purchases. The Id. DR in support of his submission placed reliance on the decision of Hon'ble Supreme Court of India in the case of N.K. Proteins Ltd. v/s DCIT.

5. Both sides heard, orders of authorities below examined. Undisputedly, the AO has accepted the sales turnover declared by the assessee. Without purchases there cannot be sales, therefore, entire alleged bogus purchases

cannot be added. It is only the profit element embedded in such transactions that has to be brought to tax. In First Appellate Proceedings, the assessee has furnished documents to substantiate genuineness of the purchases allegedly made from suspicious dealers. The CIT(A) upheld the findings of AO to the extent that the purchases are non-genuine, however, the CIT(A) restricted the addition by estimating Gross Profit @ 20% on the bogus purchases. I find no error in the impugned order, hence, the same is upheld and appeal of the Revenue is dismissed.

Order pronounced in the open court on **Thursday**, the **10th** day of June, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 10/06/2021

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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

ITAT, Mumbai