

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. 7058/मुं/2019 (नि.व.2009-10)
ITA NO.7058/MUM/2019 (A.Y.2009-10)
आअसं. 7059/मुं/2019 (नि.व.2010-11)
ITA NO.7059MUM/2019 (A.Y.2010-11)

ITO-6(3)(3),
Room No. 524, 5th Floor,
Aayakar Bhavan,
M.K. Road, Mumbai-400020.

..... अपीलार्थी /Appellant

बनाम Vs.

J.K. Switchgears & Kable Pvt. Ltd.
124, 2nd Floor,
Narayan Dhuru Street,
Nagdevi, Mumbai-400003.

PAN: **AABCJ0422H**

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Smita Verma

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 03/05/2021

घोषणा की तिथि/ Date of pronouncement : 16/07/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

These two appeals by the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-12, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Years (AY) 2009-10 & 2010-11, respectively.

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Both the impugned orders are of even date i.e. 20.08.2019. Since, the issue raised in both the appeals is identical. These appeals are taken up together for adjudication and are decided by this common order.

ITA No. 7058/Mum/2019 (AY-2009-10)

2. Ms. Smita Verma representing the Department submitted that during the period relevant to AY under appeal, the assessee has obtained accommodation entries to the tune of Rs. 1,45,829/- from dealers engaged in providing bogus bills. The name of said dealers appear in the list of hawala operators declared by the Sales Tax Department, Government of Maharashtra. During assessment proceedings, the assessee failed to discharge its onus in proving genuineness of the aforementioned dealers and purchases made from them. The notices issued under section 133(6) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] to the suspicious dealers were received back unserved from the postal authorities, no confirmations from the said dealers nor any documentary evidence to prove trail of goods were furnished by the assessee. Thus, the Assessing Officer (AO) made addition of entire unproved purchases. In first appellate proceedings, the CIT(A) restricted the disallowance in respect of bogus purchases to Rs. 18,229/- by estimating profit margin on such purchases at 12.5%. The Revenue is in appeal against the relief granted by the CIT(A). The Id. Departmental Representative (DR) prayed for restoring 100% disallowance made by AO on bogus purchases.

4. Submissions made by Id. DR heard, orders of the authorities below examined. Undisputedly, the assessee has failed to discharge its onus in proving genuineness of the dealers and the purchases made from them. At the

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same time, it is observed that the AO has accepted sales turnover declared by the assessee. Under such circumstances, entire alleged bogus purchases cannot be disallowed. It is only the profit element embedded in such suspicious transaction that can be brought to tax. (*Re: PCIT vs. Paramshakti Distributors Pvt. Ltd. in Income Tax Appeal No. 413 of 2017 decided on 15.07.2019*). The AO has erred in making addition of the entire alleged bogus purchases. In first appellate proceedings, the CIT(A) after examining the facts of the case and considering various decisions rendered by the Hon'ble High Courts and different benches of the Tribunal restricted the addition to 12.5% of alleged bogus purchases. I see no infirmity in the order of CIT(A), hence, the same is upheld and appeal of the Revenue is dismissed, sans merit.

ITA No. 7059/Mum/2019 (AY-2010-11)

5. The Id. DR submitted that the facts in AY 2010-11 are identical to the appeal for AY 2009-10, except for the quantum of bogus purchases.

6. The assessee in AY 2010-11 has allegedly obtained bogus purchase bills aggregating to Rs. 12,74,894/- from suspicious dealers. The AO for similar reasons to AY 2009-10 disallowed entire alleged bogus purchases. In first appellate proceedings, the CIT(A) upheld the findings of AO to the extent of assessee's involvement in obtaining bogus purchase bills, however, the CIT(A) restricted the addition to 12.5% of alleged bogus purchases. Since, the facts in impugned AY are *pari materia* to the facts in AY 2009-10, the findings for upholding the impugned order would mutatis mutandis apply to the present appeal. The appeal of Revenue is dismissed for parity of reasons.

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7. To sum up, the appeal of Revenue for AY 2009-10 & 2010-11 are dismissed.

Order pronounced in the open court on **Friday**, the **16th** day of July, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 16/07/2021

SK, PS

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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

ITAT, Mumbai