

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
आअसं. 45/मुं/2020 (नि.व.2009-10)
आअसं. 46/मुं/2020 (नि.व.2010-11)
ITA NO.45/MUM/2020 (A.Y.2009-10)
ITA NO.46/MUM/2020 (A.Y.2010-11)

ITO-22(2)(6),
Room No. 109, 1st Floor,
Piramal Chambers,
Lalbaug, Mumbai-400012.

..... अपीलार्थी /Appellant

बनाम Vs.

Monochem Industries,
2nd Floor, Mohatta Bhavan,
Dr. E. Moses Road, Worli,
Mumbai-400018.

PAN: **AABFM0987F**

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Sanjay J. Sethi

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 15/06/2021

घोषणा की तिथि/ Date of pronouncement : 10/08/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

These two appeals by the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-33 Mumbai [hereinafter referred to as

‘the CIT(A)’] dated 30.10.2019 common Assessment Years (AY) 2009-10 & 2010-11, respectively. Since, the facts germane to the grounds raised in the appeals are similar, these appeals are taken up together for adjudication and are decided by this common order.

ITA No. 45/Mum/2020, AY-2009-10

2. Sh. Sanjay J. Sethi representing the Department submitted that during the period relevant to AY 2009-10, the assessee has obtained bogus purchase bills aggregating to Rs. 7,11,798/- from M/s Crystal Commercial Company Rs. 78,268/- and M/s Yash Enterprises Rs. 6,33,530/-. The Assessing Officer (AO) issued notice under section 133(6) of the Income Tax Act, 1961 [hereinafter referred to as ‘the Act’] to the aforesaid dealers on the address furnished by the assessee. The notices were returned back by postal authorities unserved. The AO deputed Inspector to make enquiries regarding the dealers. After visiting at the given address, the Inspector was unable to trace whereabouts of the dealers. During assessment proceedings, the assessee also failed to produce the dealers or any confirmations from the said dealers. No documentary evidence was furnished by the assessee in the form of lorry receipts, inward register, octroi receipts, etc. to prove trail of goods. Since, the assessee had failed to discharge its onus in proving genuineness of the dealers and the purchases made from them, the AO made addition of the entire bogus purchases. In First Appellate proceedings, the CIT(A) restricted the addition to 25% of bogus purchases. The Id. DR vehemently defended the impugned order and in support of his submissions placed reliance on the decision rendered by Hon’ble Supreme Court of India in the case of N.K. Proteins Ltd. v/s DCIT [84 taxmann.com 195].

3. Submissions made by Id. DR heard, orders of authorities below examined. The assessee is engaged in manufacturing and trading of Soaps, detergents, deodorants and disinfects. Undisputedly, the assessee failed to discharge its onus in proving authenticity of the dealers and genuineness of purchases made from the said dealers. It is observed that the AO accepted the sales turnover declared by the assessee. Once the sales turnover has been accepted, entire alleged bogus purchases cannot be disallowed. Without purchases, there cannot be sales. Under such circumstances, it is only the suppressed profit element embedded in bogus transactions that can be brought to tax. The AO clearly erred in making addition of the entire alleged bogus purchases. In First Appellate proceedings, the CIT(A) restricted the addition to 25% of bogus purchases. We find no infirmity in the impugned order, hence, the same is upheld and appeal of the Revenue is dismissed.

ITA No. 46/Mum/2020, AY-2010-11

4. The Id. DR pointed that the nature of unproved purchase transactions and manner of disallowance made by AO in AY 2010-11 are identical to AY 2009-10, except for the amount. In the period relevant to AY 2010-11, the assessee has obtained bogus purchase bills amounting to Rs. 13,96,362/- from M/s Yash Enterprises. In the absence of any cogent evidence, proving genuineness of the dealer and the purchases made from the said dealer, the AO made addition of the entire bogus purchases. In First Appellate proceedings, the CIT(A) restricted the addition to 25%. Hence, the present appeal by the Revenue against the relief allowed by the CIT(A).

5. We observe that the facts in AY 2010-11 are identical to the facts in AY 2009-10. The detailed findings given while adjudicating appeal of the Revenue for AY 2009-10 would mutatis mutandis apply to the current AY, as well.

6. In the result, appeal of the Revenue is dismissed.

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

Order pronounced in the open court on **Tuesday**, the **10th** day of August, 2021.

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Dated: 10/08/2021

SK, PS

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

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