

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. 5279/मुं/2019 (नि.व.2009-10)
ITA NO.5279/MUM/2019 (A.Y.2009-10)

M/s MAC Dyechem Industries,
Plot No.D/24/7, MIDC TTC Industrial Area,
Opp. Balmer Lawrie, Turbhe,
Navi Mumbai-400705.

PAN: **AAEFM6471D**

..... अपीलार्थी /Appellant

बनाम Vs.

ITO-28(2)(2),
Room No. 311, 3rd Floor,
6th Tower, Vashi Railway Station Complex,
Vashi-400703.

..... प्रतिवादी /Respondent

आअसं. 5744/मुं/2019 (नि.व.2009-10)
ITA NO.5744/MUM/2019 (A.Y.2009-10)

ITO-28(2)(2),
Room No. 311, 3rd Floor,
6th Tower, Vashi Railway Station Complex,
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..... अपीलार्थी /Appellant

बनाम Vs.

M/s MAC Dyechem Industries,
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Navi Mumbai-400705.

PAN: **AAEFM6471D**

..... प्रतिवादी /Respondent

विभाग द्वारा/ Department by : Sh. Sanjay J. Sethi

निर्धारिती द्वारा / Assessee by : Ms. Hiral Sejpal

सुनवाई की तिथि/ Date of hearing : 14/06/2021

घोषणा की तिथि/ Date of pronouncement : 24/08/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

These cross appeals by the assessee and the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-26 Mumbai [hereinafter referred to as 'the CIT(A)'] dated 12.06.2019 for the Assessment Year (AY) 2009-10.

2. Ms. Hiral Sejpal appearing on behalf of the assessee submitted that assessee is engaged in manufacturing and trading of dyes and chemicals. The assessment in the case of assessee for AY 2009-10 was re-opened for the reason that the assessee has allegedly obtained bogus purchase bills amounting to Rs. 1,52,31,031/- during the period relevant to the AY under appeal. The assessee in order to prove genuineness of the purchases had furnished copies of ledger accounts of all the parties, bank statements, etc. The Assessing Officer accepted the sales turnover declared by the assessee and thereafter estimated Gross Profit (GP) @ 12.5% on alleged hawala purchases and made addition of Rs. 19,03,878/-.

Aggrieved by the assessment order dated 13.03.2015 passed under section 143(3) read with section 147 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'], the assessee filed appeal before the CIT(A). Before the First Appellate authority, the assessee furnished VAT Audit Report. As per the said report, the assessee had made purchases from alleged hawala dealers

only to the extent of Rs. 76,78,960/-. The CIT(A) modified the assessment order only to the extent of total alleged hawala purchases as per VAT Audit Report and retained adhoc GP addition @ 12.5%. The Id. Authorized Representative (AR) submitted that the assessee has declared GP of 9.42% during the Financial Year (FY) 2008-09. The industry GP is 9.12%. The GP declared by the assessee is more than industry GP. The Id. AR submitted that in light of documentary evidence furnished by the assessee the entire addition in respect of bogus purchases be deleted. The Id. AR further submitted that without prejudice to primary prayer the addition may be restricted to the extent of difference between the GP estimated by the AO and the GP declared by the assessee. To support her submissions, the Id. AR placed reliance on the decision of Tribunal in the case of ITO Vs. Ami Riddhi Chem Pvt. Ltd. in ITA No. 5897 & 5898/Mum/2017 for the AY 2011-12 & 2012-13 decided on 01.01.2019.

3. On the other hand, Sh. Sanjay J. Sethi representing the Department vehemently defending the assessment order submitted that the VAT Audit Report on the basis of which the CIT(A) has reduced the amount of bogus purchases from Rs. 1,52,31,031/- to 76,78,960/- was never brought to the notice of AO. The CIT(A) has failed to appreciate the fact that parties from whom assessee has made unapproved purchases are declared hawala operators. The Id. DR submitted that the assessee has failed to discharge its onus in proving genuineness of the dealers and the purchases made from them. The Id. DR prayed for restoring the addition made as per assessment order.

4. Both sides heard, orders of authorities below examined. The assessee in appeal has assailed *ad hoc* GP rate adopted by the AO and subsequently confirmed by the CIT(A) for making addition on unproved purchases allegedly made from suspicious dealers.

On the other hand, the Revenue in appeal has assailed the action of CIT(A) in reducing the quantum of bogus purchases in the light of VAT Audit Report.

5. Undisputedly, the assessee failed to discharge its onus in proving genuineness of alleged suspicious dealers and the purchases made from them. The AO estimated GP on bogus purchases @ 12.5%. The AO computed total amount of bogus purchases from hawala operators at Rs. 1,52,41,031/-. In First Appellate proceedings, the CIT(A) upheld the findings of AO to the extent of assessee's involvement in obtaining bogus bills and the rate of GP estimated on such bogus purchases. However, on the basis of VAT Audit Report, the CIT(A) reduced quantum of bogus purchases to Rs. 76,78,960/-. We observe that the assessee has declared GP of 9.42% on regular transactions. This GP has not been disturbed by the AO. In bogus purchase transactions, the modus operandi is that the purchases are made from grey market to save VAT and marginal purchase cost and matching bogus bills are obtained from accommodation entry providers. Taking into consideration entirety of facts, we are of considered view that the ends of justice would be met, if suppressed profit margin on bogus purchases amounting to Rs. 76,78,960/- is estimated at 5%. We hold and direct accordingly.

6. In view of our above findings, the appeal of assessee is partly allowed and appeal by the Revenue is dismissed.

Order pronounced in the open court on **Tuesday**, the **24th** day of August, 2021.

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Dated: 24/08/2021

SK, PS

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

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