

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. 87/मुं/2020 (नि.व.2009-10)
ITA NO.87/MUM/2020 (A.Y.2009-10)
आअसं. 88/मुं/2020 (नि.व.2010-11)
ITA NO.88/MUM/2020 (A.Y.2010-11)

ITO-23(2)(2),

Room No. 111, Matru Mandir,

Piramal Chambers,

Grant Road, Mumbai-400007.

..... अपीलार्थी /Appellant

बनाम Vs.

Sh. Kumar Balumal Rohra,

Flat No. B-2, 2nd Floor,

Marry Lodge, Bandra (W),

Mumbai-400050.

PAN: **AABPR7678E**

..... 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 : 24/08/2021

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 15.10.2019 common for the Assessment Years (AYs) 2009-10 & 2010-11. Since, the issue raised in both the appeals by the Revenue and the grounds of appeal are identical, these appeals are taken up together for adjudication and are decided by this common order.

2. For the sake of convenience, the facts involved in these appeals are narrated from the appeal of the Revenue for AY 2009-10.

ITA No. 87/Mum/2020 AY-2009-10

3. The brief facts of the case as emanating from records are: The assessee is engaged in trading of zip fasteners, garment accessories, etc. The assessment for AY 2009-10 & 2010-11 in the case of assessee were re-opened on the basis of information received from the Sales Tax Department, Government of Maharashtra. As per the information received, the assessee obtained bogus bills from dealers, declared as hawala operators. During the period relevant to the AY 2009-10, the assessee had allegedly obtained bogus purchase bills amounting to Rs. 12,27,897/- from seven such dealers. The assessee failed to prove genuineness of the dealers and the purchases made from them to the satisfaction of Assessing Officer (AO). The AO rejected the books of assessee under section 145(3) of the Income Tax Act, 1961 [hereinafter referred to as ‘the Act’] and made addition of the entire alleged bogus purchases.

Aggrieved by the assessment order dated 04.03.2016 passed under section 143(3) read with section 147 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) after examining the facts of the case estimated profit element embedded in bogus purchases @ 20% and hence, restricted the

addition to Rs. 2,45,579/-. Against the findings of the CIT(A), the Revenue is in appeal before the Tribunal.

4. Sh. Sanjay J. Sethi representing the Department submitted that the assessee has failed to discharge his onus in proving genuineness of the dealers and the purchases made from them. The AO had issued notice under section 133(6) of the Act to the suspicious dealers, however, the same remained unresponded. The AO got the enquiries conducted through Ward Inspector and it was found that the parties are non-existent. The assessee failed to produce books and relevant document to substantiate trail of goods. The assessee neither produced the dealers nor any confirmations were filed from them. The Id. Departmental Representative (DR) prayed for reversing the findings of CIT(A) and upholding the addition made by the AO.

5. Submissions made by Id. DR heard, orders of the authorities below examined. Undisputedly, the assessee failed to discharge his onus in proving authenticity of the suspicious dealers and the purchases made from them. We observe that the AO has accepted the sales turnover declared by the assessee. Without purchases there cannot be sales, therefore, entire alleged bogus purchases cannot be disallowed. It is the profit element embedded in such transactions that can only 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 disallowing entire alleged bogus purchases. The CIT(A) has estimated suppressed profit margin embedded in alleged bogus transactions at 20%. We concur with the findings of CIT(A), hence, the impugned order is upheld and appeal of the Revenue is dismissed, sans merit.

ITA No. 88/Mum/2020 AY-2010-11

6. The facts in the present appeal are identical to the facts in AY 2009-10 except for the amount of bogus purchases. In A.Y. 2010-11 the quantum of bogus purchases is Rs. 12,77,946/-. The nature of transaction and the manner of disallowance is identical to AY 2009-10. Therefore, the detailed findings given while adjudicating the appeal for AY 2009-10 would mutatis mutandis apply to the present appeal. For parity of reasons, the present appeal of the Revenue is dismissed.

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

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai