

आयकर अपीलीय अधिकरण “SMC” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ ITA No. 2015/Mum/2020

(निर्धारण वर्ष / Assessment Year 2010-11)

The Income Tax Officer Ward-1(1) 1 st Floor, Mohan Plaz, Wayale Nagar, Klayan (W)-421301	Vs.	M/s Arudaya Chemicals P. Ltd. W-46, MIDC, Moriwali Village, Ambarnath, Kalyan, Maharashtra-421301
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AADCA3393A		

प्रत्याक्षेप सं./ CO No. 121/Mum/2021

(Arising in ITA No. 2015/Mum/2020 for AY 2010-11)

M/s Arudaya Chemicals P. Ltd. W-46, MIDC, Moriwali Village, Ambarnath, Kalyan, Maharashtra-421301	Vs.	The Income Tax Officer Ward-1(1) 1 st Floor, Mohan Plaz, Wayale Nagar, Klayan (W)-421301
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Smt. Smita Verma, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Mehul shah, AR

सुनवाई की तारीख / Date of hearing:	30.09.2021
घोषणा की तारीख / Date of pronouncement :	30.09.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /
PER MAHAVIR SINGH, VP:

These cross appeals are arising out of order of the Commissioner of Income Tax (Appeals)-2, Thane [in short CIT(A)], in ITA No. 10636/2015-16 vide dated 28.02.2020. The Assessment was framed by the Income Tax Officer, Ward 1(1), Mumbai (in short ITO / AO) for the A.Y. 2010-11 vide order



dated 13.03.2015 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only common issue in these cross appeals is as regards to the order of CIT(A) in restricting the addition of bogus purchases by estimating the profit rate at 12.5 % of the bogus purchases as against addition made by Assessing Officer at 100%.

3. I have heard the rival contentions and gone through the facts and circumstances of the case. The brief facts are that the Assessing Officer received information from Sales Tax Department that certain persons are providing bogus bills / accommodation entries to various parties and assessee is one of the beneficiaries. As per information received, the assessee has obtained bogus bills amounting to ₹ 3,17,304 from the following parties: -

Sr. No.	Name of the Party	Amount
1.	Cimco Corporation	64,064
2.	Dhiren Mercantile Pvt. Ltd.	60,736
3.	Ashu Mercantile Pvt. Ltd.	71,240
4.	Choksi Brothers	1,21,264
	Total	3,17,304

4. The Assessing Officer rejected the claim of the assessee and held that the purchase made with the above mentioned hawala parties were non genuine and hence, he added the entire bogus purchases of ₹3,17,304/-. The assessee preferred the appeal before Commissioner of Income Tax (Appeals). The CIT(A) restricted the disallowance at 25% of the bogus purchase by observing in Para 6.4 as under: -



“6.4 From the above discussion, it can be concluded that, it is a case where the goods were received from the parties other than the persons who had issued the bills for such goods. Though the purchases were shown to have been made by making pay rent to Hawala dealers but goods must have come from grey market, therefore, under such circumstances, the chances of purchase cost being inflated cannot be ruled out, In all the parties i.e. Cimco Corporation, Dhiren mercantile Pvt. Ltd., Ashu Mercantile Pvt. Ltd. & Choksi Brothers, the return unserved.

Considering the totality of the facts of the case, I am of the considered opinion to disallow 25% of unverifiable purchases made from unverifiable/Hawala parties. Accordingly, the book result of the appellant is rejected u/s. 145(3) of the Act. The disallowance 25% out of unverifiable purchases from unverifiable/Hawala dealer had been upheld in the aforesaid case:

(1) Sanjay Oil Cake Industries Vs CIT (2008) 316 ITR 274 (Guj)

(2) Vijay Proteins Ltd Vs ACIT 58 ITD 428 (Abd)

(3) M/s Nand Kishore Meghraj Jewellers, Jaipur Co. No. 105/JP/09 arising out of TA No. 433/JP/2009 by hAT Jaipur

(4) M/s. Trident Jewellers ITAT Jaipur ITA No. 552/JP/2013.

In view of the above stated facts, the disallowance © 25% of Rs. 3,17,304/- works out at Rs. 79,326/- is sustained and the same is added to the total income of the assessee. The appellant get



ITA No. 2015/Mum/2020 & CO No. 121/Mum/2021
M/s Arudaya Cemicals P. Ltd.; AY 10-11

*relief of Rs. 2,37,978/- (Rs. 3,17,304 - Rs. 79,326) and hence
the ground of appeal of appellant is hereby partly allowed.”*

Aggrieved, both assessee as well as Revenue came in cross appeal.

5. After hearing both the sides, I noted that the assessee has produced purchase bills, payment made by cheque and books of accounts and also filed stock summary, purchase register, sales register, monthwise purchases, headwise expense etc. but the assessee could not file quantitative details with regard to opening stock etc. Even the Assessing Officer has no doubted the sales made by the assessee out of these purchases. Hence, I am of the view that the CIT(A) has rightly restricted the profit rate on the above bogus purchases at 25%. I find no infirmity in the order of CIT(A) and hence, both the appeals i.e. of the Revenue as well as assessee are dismissed.

6. In the Result, the appeals of Revenue as well as CO of the assessee are dismissed.

Order pronounced in the open court on 30.09.2021.

Sd/-
(महावीर सिंह /MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 30.09.2021

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS



ITA No. 2015/Mum/2020 & CO No. 121/Mum/2021
M/s Arudaya Cemicals P. Ltd.; AY 10-11

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai