

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 7763/मुं/2019 (नि.व 2009-10)
ITA NO.7763/MUM/2019(A.Y 2009-10)
आअसं. 7764/मुं/2019 (नि.व 2010-11)
ITA NO.7764/MUM/2019(A.Y 2010-11)

Income Tax Officer -20(1)(2)
Room No.119, 1st Floor,
Piramal Chamber, Lalbaug,
Parel, Mumbai 400 012

..... अपीलार्थी /Appellant

बनाम Vs.

Shri Ashok A. Bagwe,
12, Wadala Udyog Bhavan,
Naigaon Cross Road, Wadala,
Mumbai 400 013.

PAN:AAAPB-9671-Q

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Sanjay J. Sethi

प्रतिवादी द्वारा/Respondent by : Shri Sunil Rohra

सुनवाई की तिथि/ Date of hearing : 29/07/2021

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

आदेश/ ORDER

These two appeals by the Revenue are directed against the orders of Commissioner of Income Tax (Appeals)-32, Mumbai [in short the 'CIT(A)'] for assessment years 2009-2010 and 2010-11, respectively. Both the impugned orders are of even date i.e. 23/10/2019. Since, facts germane to the issue raised in these appeals are similar, these appeals are taken up together for adjudication and are decided by this common order.

2. For the sake of convenience facts are narrated from the appeal in ITA No.7763/Mum/2019 for assessment year 2009-10.

ITA NO.7763/MUM/2019, A.Y. 2009-10:

3. The brief facts of the case as emanating from records are: The assessment for assessment year 2009-10 in the case of assessee was reopened on the basis of information received Director General of Income Tax(Investigation). As per the information received, the assessee had obtained bogus purchase bills aggregating to Rs.8,48,803/- in F.Y. 2008-09 from the following operators declared as hawala dealers by the Sales Tax Department, Government of Maharashtra.

(1) Nageshwar Enterprises	- Rs.5,09,611/-
(2) Meeti Trade Impex	- Rs.1,66,249/-
(3) Maulik Enterprises	- Rs.1,72,943/-

During the assessment proceedings the assessee furnished invoices/bills and ledger accounts to substantiate genuineness of purchases. However, no transport bills, delivery challans, etc. were produced by the assessee to prove trail of goods. The Assessing Officer concluded that assessee had obtained bogus purchase bills and made addition of the entire unproved purchases i.e. Rs.8,48,803/-.

Against the assessment order dated 10/03/2014, the assessee filed appeal before the CIT(A). The CIT(A) after considering the submissions of assessee and material available on record restricted the addition by estimating suppressed profit margin on bogus purchases at 5%. Now, the Revenue is in appeal against the relief granted by the CIT(A).

4. The Shri Sanjay J. Sethi representing the Department vehemently defended the assessment order. The Id.Departmental Representative submitted that the assessee has failed to discharge his onus in proving genuineness of dealers and purchases made from them. No documentary evidence was furnished by the assessee to prove transportation of goods. The assessee neither produced the dealers nor any confirmations from the said dealers were furnished by the assessee. The Id.Departmental Representative prayed for reversing the finding of CIT(A) and upholding the assessment order. To further buttress his submissions, the Id.Departmental Representative placed reliance on the case of N.K. Proteins vs. DCIT, 84 taxmann.com195(SC).

5. On the other hand, Shri Sunil Rohra appearing on behalf of the assessee vehemently defended the impugned order and prayed for dismissing the appeal filed by the Revenue. The Id.Authorized Representative of the assessee submitted that assessee has declared G.P of 28.49% during the relevant assessment year on regular transactions.

6. Both sides heard, orders of authorities below examined. Undisputedly, the assessee has failed to discharge his onus in proving authenticity of the dealers and genuineness of purchases made from them. At the same time it is observed that the Assessing Officer has accepted sales turnover declared by the assessee. Without purchases there cannot be sales. Therefore, entire alleged bogus purchases cannot be added. It is only the profit element embedded in such like transactions that can be brought to tax [*Re: PCIT vs. Paramshakhti Distributors Pvt. Ltd. in Income Tax Appeal No.413 of 2017 decided on 15/07/2019 by the Hon'ble Bombay High Court.*] Taking into consideration entirety of facts, I find that the Assessing Officer has erred in

disallowing entire alleged bogus purchases. The order of CIT(A) is fair and justified in estimating suppressed profit margin on unproved purchases at 5%. Hence, the impugned order warrants no interference. The impugned order is upheld and appeal by the Revenue is dismissed sans merit.

ITA NO.7764/MUM/2019, A.Y. 2010-11:

7. Both sides are unanimous in stating that the facts in appeal for assessment year 2010-11 are similar to the facts in assessment year 2009-10. Nature of transactions and the manner of addition is identical except for the quantum of bogus purchases and the dealers. In assessment year 2010-11 the assessee has allegedly obtained bogus purchase bills amounting to Rs.10,03,551/- from four dealers stated to be accommodation entry providers. The respective sides agreed that the submissions made for assessment year 2009-10 would apply to assessment year 2010-11. Since, the facts are similar to the facts in assessment year 2009-10, the detailed findings given while adjudicating appeal of the Revenue for assessment year 2009-10 would *mutatis mutandis* apply to the present appeal also. For parity of reasons the appeal by the Revenue is dismissed.

8. To sum up, both appeals by the Revenue are dismissed.

Order pronounced in the open Court on Friday the 08th day of October, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 08/10/2021
Vm, Sr. PS (O/S)

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