

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 476/मुं/2020 (नि.व.2011-12)
ITA NO.476/MUM/2020 (A.Y.2011-12)

ITO-6(3)(1),
5th Floor, Room No. 503,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

..... अपीलार्थी /Appellant

बनाम Vs.

M/s IFHS Steels Pvt. Ltd.
Room No. 4, 1st Floor,
193, Nagdevi Street,
Mumbai-400003.

PAN: **AAACI4775M**

..... प्रतिवादी/Respondent

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

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 30/06/2021

घोषणा की तिथि/ Date of pronouncement : 23/09/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-12, Mumbai [hereinafter referred to as 'the CIT(A)'] ' dated 22.10.2019 for the Assessment Year (AY) 2011-12.

2. The brief facts of the case as emanating from records are: The assessee is trading in fasteners. On the basis of information received from the Sales Tax

Department, Government of Maharashtra, assessment for AY 2011-12 in the case of assessee was re-opened. As per the information received, the assessee obtained bogus purchase bills aggregating to Rs. 14,92,892/- from various (twelve) dealers, declared as hawala operators by the Sales Tax Department. During assessment proceedings, the Assessing Officer (AO) issued notice under section 133(6) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] to the dealers from whom the assessee had allegedly made purchases. The said notices were received back unserved from the postal authorities with remarks "Left or Not Known". No confirmations from the vendors were filed by the assessee, no documentary evidence to substantiate trail of goods was furnished by the assessee. The AO made addition of the entire bogus purchases.

Aggrieved by the assessment order dated 27.01.2016 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 facts of the case and documents on record restricted the disallowance on bogus purchases to 12.5%. Now, the Revenue is in appeal against the relief granted by the CIT(A).

3. Sh. Sanjay J. Sethi representing the Department vehemently defended the assessment order and prayed for reversing the findings of CIT(A) in so far as granting partial relief to the assessee.

4. Submissions made by Id. Departmental Representative (DR) heard, orders of the authorities below examined. Undisputedly, the assessee failed to discharge its onus in proving genuineness of the purchases and the dealers. At the same time, it is observed that the sales declared by the assessee has not

been disputed by the AO. Without purchase there cannot be sales, hence, entire alleged bogus purchases cannot be disallowed. It is only the suppressed profit margin in such transactions that can 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 CIT(A) after examining the facts of the case has restricted the disallowance on bogus purchases to Rs. 1,86,612/- by estimating suppressed profit margin at 12.5%. I find no infirmity in the impugned order, hence, the same is upheld and appeal of the Revenue is dismissed, sans merit.

Order pronounced in the open court on **Thursday**, the **23rd** day of September, 2021.

Sd/-
(VIKAS AWASTHY)
न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 23/09/2021

SK, PS

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