

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. 512/मुं/2020 (नि.व.2009-10)
ITA NO.512/MUM/2020 (A.Y.2009-10)

ITO-22(1)(7),
Room No. 120, 1st Floor,
Piramal Chambers,
Lalbaug, Mumbai-400012.

..... अपीलार्थी /Appellant

बनाम Vs.

M/s Furniture Craft
D/83, TTC Industrial Estate,
Thane Belapur Road,
Navi Mumbai-400703.

PAN: **AABFF2257R**

..... प्रतिवादी/Respondent

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

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 01/07/2021

घोषणा की तिथि/ Date of pronouncement : 24/09/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-33, Mumbai [hereinafter referred to as 'the CIT(A)'] ' dated 15.11.2019 for the Assessment Year (AY) 2009-10.

2. The brief facts of the case as emanating from records are: The assessee is engaged in manufacturing and trading of furniture. The assessment for AY

2009-10 in the case of assessee was re-opened on the basis of information received from the Sales Tax Department, Government of Maharashtra. As per the information received, the assessee had procured fictitious purchase bills aggregating to Rs. 7,90,102/- from M/s R.S. Industries, M/s Deep Enterprises and M/s Siddhivinayak Steel. During assessment proceedings, the Assessing Officer (AO) had issued notice under section 133(6) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] to the aforesaid parties, however, there was no response to the notices issued by the AO. In the absence of any cogent evidence from the assessee to discharge its onus in proving genuineness of the dealers and the purchases made from them, the AO made addition of the entire alleged bogus purchases.

Against the assessment order dated 30.03.2015 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 and submissions of the assessee granted part relief to the assessee by restricting disallowance to Rs. 1,97,525/- by estimating suppressed profit margin of 25% of unproved purchases. Against the relief granted by the CIT(A), the Revenue is in appeal before the Tribunal.

3. Sh. Sanjay J. Sethi representing the Department vehemently supported the assessment order and prayed for reversing the findings of First Appellate Authority. The Id. Departmental Representative (DR) submitted that the CIT(A) has failed to appreciate the fact that the assessee has failed to substantiate genuineness of the dealers and the purchases made from them. The dealers from whom the assessee had obtained fictitious purchase bills were declared hawala operators by the Sales Tax Department, Government of Maharashtra.

The Id. DR in support of his submissions placed reliance on the decision in the case of N.K. Proteins Ltd. v/s DCIT, 84 taxmann.com 195 (SC).

4. Submissions made by Id. DR heard, orders of the authorities below examined. Undisputedly, the assessee failed to discharge its onus in proving genuineness of the dealers and the purchases made from them. The assessee could neither produce the dealers nor could furnish confirmations from the said dealers. Further, the assessee failed to furnish any documentary evidence to prove transportation of goods allegedly purchased from the aforesaid dealers. At the same time, it is observed that the sales turnover and inventory declared by the assessee has not been disputed by the Revenue. Without purchases there cannot be sales. It is only the profit element embedded in such like 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*). Therefore, in my considered view, the AO has erred in making addition of the entire alleged bogus purchases. The CIT(A) after examining the facts in a fair and justified manner has restricted the disallowance on bogus purchases to 25%. I find no reason to interfere with the impugned order, hence, the same is upheld and the appeal of Revenue is dismissed, sans merit.

Order pronounced in the open court on **Friday**, the **24th** day of September, 2021.

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

मुंबई/Mumbai, दिनांक/Dated: 24/09/2021

SK, PS

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