

आयकर अपीलिय 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. 492/मुं/2020 (नि.व.2009-10)

ITA NO.492/MUM/2020 (A.Y.2009-10)

आअसं. 493/मुं/2020 (नि.व.2010-11)

ITA NO.493/MUM/2020 (A.Y.2010-11)

ITO-6(3)(3),
Room No. 524, 5th Floor,
Aayakar Bhavan, M.K. Road,
New Marine Lines, Mumbai-400020.

..... अपीलार्थी /Appellant

बनाम Vs.

JTCLS Appliances Pvt. Ltd.
210, 2nd Floor, Regal Arcade,
Behind Roxy Cinema,
Charni Road, Mumbai-400004.

PAN: **AABCJ5606P**

..... 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:

These two appeals by the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-12, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year (AY) 2009-10 & 2010-11, respectively. Both the impugned orders are of even date i.e. 24.10.2019. Since, the grounds

raised by the Revenue and the facts in both the appeals are identical, these appeal 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. 492/Mum/2020 for AY 2009-10. The assessee is engaged in trading of imported diaphragm pumps, generators, fire extinguishers, hardware items, etc. The assessment for AY 2009-10 in the case of assessee was re-opened on the basis of information received from DGIT (Investigation), Mumbai. As per the information received, the assessee has obtained bogus purchase bills from following parties during the period relevant to AY under appeal.

Sr.	Name of the purchase party	Amount (Rs.)
1	Prajwal Sales Corporation	41,402/-
2	Pinak Sales Corporation	2,88,950/-
3	G.M. Impex	5,23,776/-
Total Rs. 8,54,128/-		

Since, the assessee failed to discharge its onus in proving genuineness of the dealers and the purchases made from them, the AO disallowed entire unproved purchases and made addition of Rs. 8,54,128/-.

Against the assessment order dated 13.03.2015 passed under section 143(3) read with section 147 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act', the assessee filed appeal before the CIT(A). The CIT(A) after examining the facts and considering submissions made by the assessee,

restricted the disallowance on bogus purchases to 12.5%. Now, the Revenue is in appeal against relief granted by the CIT(A).

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 12.5%. I find no reason to interfere with the impugned order, hence, the same is upheld and appeal of the Revenue is dismissed, sans merit.

ITA No. 493/Mum/2020 for AY 2010-11

5. The Id. DR submitted that the addition on account of bogus purchases in AY 2010-11 has been made for the reasons similar to AY 2009-10.

6. As has been observed earlier, the grounds raised in the appeal and the manner of addition is identical to AY 2009-10. In AY 2010-11, the assessee has obtained bogus purchase bills aggregating to Rs. 7,43,952/- from nine hawala dealers. On parity of facts, the findings given while adjudicating the appeal of Revenue for AY 2009-10 would mutatis mutandis apply to the present appeal. Consequently, appeal of the Revenue is dismissed, being devoid of any merit.

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

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.

आअसं. 492 & 493/मुं/2020 (नि.व.2009-10 & 2010-11)
ITA No. 492 & 493/Mum/2020 (A.Y. 2009-10 & 2010-11)

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai