

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. 1120/मुं/2020 (नि.व 2011-12)
ITA NO.1120/MUM/2020(A.Y 2011-12)

Income Tax Officer -32(1)(2),
Room No.704, 7th Floor,
Kautilya Bhavan, Bandra Kurla Complex,
Bandra (E), Mumbai 400 051

..... अपीलार्थी /Appellant

बनाम Vs.

C.S.Sharma & Co.,
503, 5th Floor, Pratik Prashant CHS,
Holy Cross Road, IC Colony,
Borivli (We), Mumbai 400 103
PAN:AACFC-6510-B

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Smita Verma

प्रतिवादी द्वारा/Respondent by : Shri Subramanian, Advocate

सुनवाई की तिथि/ Date of hearing : 07/09/2021

घोषणा की तिथि/ Date of pronouncement : 03/12/2021

आदेश/ ORDER

This appeal by the Revenue is directed against the order of Commissioner of Income Tax(Appeals)-46, Mumbai [in short ' the CIT(A)'] dated 01/11/2019 for the Assessment Year 2011-12.

2. The solitary issued raised in this appeal by the Revenue is against relief granted by the CIT(A) in respect of alleged bogus purchases made by the assessee.

3. Brief facts of the case as emanating from records are: The assessee is engaged in the business of construction, weather proofing, structural rehabilitation,

etc. The assessment for Assessment Year 2011-12 in the case of assessee was reopened on the ground that that assessee has obtained bogus purchase bills aggregating to Rs.27,09,645/- from the parties engaged in providing bogus bills. During the course of assessment proceedings the Assessing Officer issued notice u/s 133(6) of the Income Tax Act, 1961 (in short 'the Act') to the parties from whom the assessee had allegedly obtained bogus purchase bills. The notices remained unserved and were returned by the Postal Authorities with remarks "left/not known/unclaimed". Since, the assessee failed to produce the parties or produced any documentary evidence to substantiate actual delivery of goods, the Assessing Officer made addition of the entire unproved purchases. Aggrieved by the assessment order dated 11/02/2016 passed u/s 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A). The First Appellate Authority after examining the facts upheld the findings of Assessing Officer to the extent that the assessee has indulged in obtaining bogus purchase bills. However, the CIT(A) in the light of various case laws cited before him estimated suppressed profit on bogus purchases at 12.5% and restricted the addition to 3,38,705/-. Against the above finding of CIT(A), the Revenue is in appeal before the Tribunal.

4. Ms. Smita verma representing the Department vehemently supported the order of Assessing Officer and prayed for reversing of the order of CIT(A).

5. Shri Subramanian appearing on behalf of the assessee/respondent strongly supported the impugned order and prayed for dismissing appeal of the Revenue.

6. Both sides heard orders of authorities below examined. The Revenue is in appeal against the finding of CIT(A) in restricting disallowance on bogus purchases to 12.5% as against 100% disallowance made on bogus purchases by the Assessing Officer. A perusal of the assessment order reveals that the Assessing Officer has accepted the turn over and inventory declared by the assessee. Without purchases the assessee could not have carried out the construction activities/ structural

rehabilitation activities. The Hon'ble Jurisdictional High Court in the case of PCIT vs. Paramshakhti Distributors Pvt. Ltd. in Income Tax Appeal No.413 of 2017 decided on 15/07/2019 has held that in such like transaction it is only the suppressed profit element embedded in the transaction that can be brought to tax, entire purchases cannot be disallowed. In the instant case, the CIT(A) has estimated suppressed profit margin on bogus transaction @12.5%. I see no reason to interfere with the impugned order. Accordingly, the same is upheld and the appeal of Revenue is dismissed being devoid of any merit.

7. In the result, appeal by the Revenue is dismissed.

Order pronounced in the open Court on Friday the 3rd day of December, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 03 /12/2021

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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai