

आयकर अपीलिय 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. 1168/मुं/2020 (नि.व 2010-11)
ITA NO.1168/MUM/2020(A.Y 2010-11)

ITO-22(3)(6),
117, 1ST Floor, Piramal Chambers,
Lal Baugh, Parel,
Mumbai 400 012.

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Tawade Engineering Works,
542, Madhani Estate, Senapati Bapat Marg,
Dadar (West), Mumbai 400 028.

PAN: AAAFT-5847-C

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Sanjay J. Sethi

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 08/09/2021

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)-33, Mumbai [in short ' the CIT(A)'] dated 26/12/2019 for the Assessment Year 2010-11.

2. Brief facts of the case as emanating from records are: The assessee is engaged in manufacturing of Vacuum Pumps and Laboratory Gin Machines. The assessment for Assessment Year 2010-11 in the case of assessee was reopened on the basis of information received from DGIT(Investigation), Mumbai. As per the information received, the assessee had obtained bogus purchase bills amounting to

Rs.8,86,777/- from various (eight) dealers engaged in providing accommodation entries. During assessment proceedings, the Assessing Officer issued notice u/s 133(6) of the Income Tax Act, 1961 (in short 'the Act') to the aforesaid dealers. None of the parties responded to the notice. The Assessing Officer observed that the assessee has failed to establish genuineness of the transactions with suspicious dealers and made addition of Rs.3,10,372/- by estimating suppressed profits @35% of unproved purchases. Aggrieved by the assessment order dated 28/12/2015 passed u/s 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A) assailing addition on merits. The CIT(A) after examining the facts upheld the findings of Assessing Officer to the extent that the assessee has obtained bogus purchase bills from hawala operators, however, the CIT(A) restricted the disallowance on bogus purchases to Rs.1,77,355/- by estimating suppressed profit margin @ 20% on such purchases. Against the relief granted by the CIT(A), the Revenue is in appeal before the Tribunal .

3. Shri Sanjay J. Sethi representing the Department vehemently defended the assessment order. The Id. Departmental Representative submitted that the CIT(A) has erred in restricting disallowance in respect of bogus purchases to 20%. The assessee has failed to discharge its onus in proving authenticity of the parties and the genuineness of the purchases made from them.

4. Submissions made by Id. Departmental Representative heard and orders of authorities below examined. In appeal, the Revenue has assailed relief granted by the CIT(A) in restricting the disallowance from 35% to 20% on alleged bogus purchases. A perusal of the assessment order reveals that while estimating suppressed profit margin at 35% the Assessing Officer has not given any basis. The CIT(A) while restricting disallowance to 20% has given a finding that since the assessee is supplying Pumps as per order to the Government Bodies estimation of 35% is on higher side. The Revenue has not been able to controvert the findings of

the Assessing Officer. Hence, we find no reason to interfere with the impugned order.

5. It is further observed that appeal of the Revenue is not maintainable on account of low tax effect in the light of CBDT Circular No.17/2019 dated 08/08/2019. The Id. Departmental Representative pointed that the appeal of Revenue falls under exception specified in para 10(e) of CBDT Circular No.3/2018 dated 11/07/2018. I find no force in the argument raised by Id. Departmental Representative. Para 10(e) of the said circular carves out an exception where addition is based on information received from "external sources". In the present case we find that the Assessing Officer has reopened assessment on the basis of information received from DGIT(Investigation), Mumbai. The DGIT(Investigation) is an internal wing of the Income Tax Department and is not an external source in the nature of law enforcement agency as is envisaged in CBDT Circular No.3(supra). This view is further fortified by the decision of Co-ordinate Bench in the case of ITO vs. Amarchand P. Shah, 73 ITR (T) 588 (Mum). Hence, appeal of the Revenue is liable to be dismissed on account of low tax effect, as well.

6. 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 /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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai