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. 1431/मुं/2019 (नि.व 2009-10)
ITA NO.1431/MUM/2019(A.Y 2009-10)
आअसं. 1432/मुं/2019 (नि.व 2010-11)
ITA NO.1432/MUM/2019(A.Y 2010-11)
आअसं. 1433/मुं/2019 (नि.व 2011-12)
ITA NO.1433/MUM/2019(A.Y 2011-12)

Income Tax Officer – 27(1)(4),
Room No.409, 4th Floor, Tower No.6,
Vashi Rly. Station Complex,
Navi Mumbai – 400 0703 ..... अपीलार्थी /Appellant

बनाम Vs.

Smt. Indira Ramchandra Sharma
C-6, Bangana CHS Ltd.
pp. U.S. Vitamins Ltd., Deonar,
Mumbai – 400 088
PAN: AAOPS-8031-R ..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Beena Santosh
प्रतिवादी द्वारा/Respondent by : Shri Ryan Saldanha

सुनवाई की तिथि/ Date of hearing : 03/08/2022
घोषणा की तिथि/ Date of pronouncement : 30/08/2022

आदेश/ ORDER

These three appeals by the Revenue are directed against the orders of Commissioner of Income Tax (Appeals)-26, Mumbai (in short 'ld. CIT(A)') for Assessment Years 2009-10, 2010-11 and 2011-12, respectively. All the impugned orders are of even date, i.e. 21.12.2018. Since, the facts germane

to the issue raised in all these appeals are identical, these appeals are taken up together for adjudication and are decided by this common order.

For the sake of convenience, facts are narrated from appeal of assessee in ITA No. 1431/Mum/2019.

ITA No. 1431/Mum/2019 (A.Y 2009-10) :

2. The brief facts of the case as emanating from record are: The assessee is engaged in manufacturing of engineering goods. The assessment for Assessment Year 2009-10 in the case of assessee was reopened on the ground that assessee has indulged in obtaining bogus purchase bills amounting to Rs.27,00,395/- from hawala operators. During the course of assessment proceedings, the Assessing Officer held that since the assessee has failed to prove genuineness of the transactions, the purchases made from suspicious dealers, i.e. Metalex Metal Industries and Mercury Metal Corporation are to be disallowed. The Assessing Officer after giving the benefit of amount added back in the subsequent assessment year made addition of the balance bogus purchases i.e. Rs.9,98,100/- from M/s. Metalex Metal Industries. Aggrieved against the assessment order dated. 24.02.2016 passed under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act'), the assessee filed appeal before the CIT(A). The ld. CIT(A) after examining facts of the case upheld the findings of the Assessing Officer to the extent that assessee has failed to prove genuineness of the purchases and suppliers, however, the CIT(A) granted part relief to the assessee by restricting disallowance to 12.5% of the bogus purchases.

3. Smt. Beena Santosh representing the Department vehemently defended the assessment order and prayed for confirming the disallowance made by the

Assessing Officer. On the other hand, Shri Ryan Saldanha appearing on behalf of the assessee submitted that the disallowance of entire alleged bogus purchases by the Assessing Officer is unsustainable. The ld.Authorized Representative of the assessee submitted that the CIT(A) in a well-reasoned order has restricted the disallowance to 12.5% of the alleged bogus purchases.

4. Both sides heard, orders of the authorities below examined. Undisputedly, the assessee has indulged in obtaining bogus purchase bills from hawala dealers as listed by the Sales Tax Department, Government of Maharashtra. The assessee failed to furnish any cogent evidence viz. delivery challans, GR, stock register to show delivery of goods. At the same time The sales turnover and the closing stock declared by the assessee have not been disputed by the Revenue. Without inputs there cannot be manufacturing/sales, therefore, in such circumstances, it is only the profit element embedded in unproved purchases that can be brought to tax and the entire bogus purchases cannot be disallowed.[PCIT vs. Paramshakhti Distributors Pvt. Ltd. in Income Tax Appeal No.413 of 2017 decided on 15/07/2019 by Hon'ble Bombay High Court.] The CIT(A) has restricted the disallowance to 12.5% of the bogus purchases and the same has been accepted by the assessee. I find no infirmity in the impugned order, hence, the same is upheld and appeal of the Revenue is dismissed.

<u>ITA Nos. 1432 & 1433/Mum/2019 (A.Ys 2010-11 & 2011-12)</u> :

5. Both sides are unanimous in stating that the facts and the nature of transactions in both the impugned assessment years are identical to the transactions in assessment year 2009-10 except for the amount and the parties. Therefore, the submissions made therein would equally apply to the

facts in the present appeals. Since, the facts in the present set of appeals are *pari materia* to Assessment Year 2009-10, the findings given while adjudicating appeal of Revenue for Assessment Year 2009-10 would *mutatis mutandis* apply to the present set of appeals. Both the appeals of Revenue are dismissed for parity of reasons.

6. In the result, appeals by the Revenue for Assessment Years 2009-10 to 2011-12 are dismissed.

Order pronounced in the open Court on Tuesday the 30th day of August, 2022.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 30/08/2022
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., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)/
Sr.Private Secretary
ITAT, Mumbai