

आयकर अपीलीय अधिकरण
मुंबई पीठ "सि"
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीतसिंह, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
आअसं.2242/मुं/2019 (नि.व. 2011-12)
ITA NO.2242MUM/2019(A.Y.2011-12)

Income Tax Officer Circle 6 (2)(1),
Room No.510, 5th Floor,
AaykarBhavan, M.K.Road,
Mumbai 400 020

.....अपीलार्थी/Appellant

Chirag Mining Pvt. Ltd.
408, Parshva, Chambers, 17/21, Issaji Street
Vadgadi, Mumbai-400003
PAN No: AABCC7528B

बनाम Vs.
..... प्रतिवादी/Respondent

अपीलार्थीद्वारा/ Appellant by : Mr. Love Kumar, Sr. AR
प्रतिवादी द्वारा/Respondent by :Mr. KetanSheth, Director in person

सुनवाई की तिथि/ Date of hearing : 13/09/2022

घोषणा की तिथि/ Date of pronouncement : 28/09/2022

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax Appeals-12 Mumbai, [in short "CIT(A)] dated 24.01.2019 for the assessment year 2011-12.

2. Shri. LoveKumar representing the department submitted that the assessee has indulged in obtaining bogus purchase bills from declared Hawalaoperators. The assessment for assessment year 2011-12 of assessee was reopened on the basis of information received from Sales Tax Department, Government of

Maharashtra, as well as DGIT (Investigation) Mumbai, As per information received, the assessee had obtained bogus purchase bills amounting to Rs.2,52,25,200/- from various (3) Hawalaoperators. During the course of assessment proceeding the assessee failed to prove genuineness of the dealers and authenticity of the purchases made from them. The notice sent by Assessing Officer under Section 133(6) of the Income Tax Act 1961 [in short "the Act"] were received back unserved from Postal Authorities with remarks "not known" or "left". No documentary evidence viz: Lorry receipts, stock registers, etc.was furnished by the assessee to substantiate movement of goods. The AO made G.P. addition at the rate of 12.5% of the unproved purchase. In First Appellate proceedings the CIT(A) restricted the G.P. addition to 5%. The Revenue is in appeal against the findings of CIT(A) restricting G.P. addition to 5%. The learned Departmental Representative vehemently defended the assessment order and to support his contentions placed reliance on the decision in the case of Simit P. Sheth 256 ITR 451 (Gujrat).

3. On the other hand, Shri. Ketan Sheth director of the respondent assessee appeared in person and supported the order of CIT(A).

4. Both sides heard, orders of the authorities below examined. The short issue in appeal before us is the estimation of G.P. addition on bogus purchase. Undisputedly, the assessee failed to prove genuineness of the transactions with suspicious dealers. The AO estimated G.P. at the rate of 12.5% on unproved purchases. In appeal by the assessee, the CIT(A) restricted the G.P. addition to 5% of the bogus purchases. The CIT(A) has observed that in the preceding assessment year the net profit was 3.20% and in the assessment year under appeal the net profit declared by the assessee is 0.09%. It is only the profit element embedded in such transactions that has to be taxed. Taking into consideration, the net profit

declared by the assessee in the impugned assessment year and preceding assessment year, the CIT(A) estimated G.P. rate of 5% on bogus purchase. We are of considered view that the estimation addition made by CIT(A) is fair and reasonable, hence, no interference in the impugned order is warranted. Consequently, the impugned order is upheld and the appeal of Revenue is dismissed.

Order pronounced in the open court on Wednesday the 28th day of September, 2022.

Sd/-

(AMARJIT SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated-28/ 09/2022

M.R. Sonavane

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्तCIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

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