

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. 5544/मुं/2019 (नि.व 2009-10)
आअसं. 5545/मुं/2019 (नि.व 2010-11)
आअसं. 5546/मुं/2019 (नि.व 2011-12)
ITA NO.5544/MUM/2019(A.Y 2009-10)
ITA NO.5545/MUM/2019(A.Y 2010-11)
ITA NO.5546/MUM/2019(A.Y 2011-12)

M/s. Aman Marketing Services Pvt.Ltd.
115, Sealord A, Cuff Parade,
Mumbai 400 005

PAN: AACFG-0200A

..... अपीलार्थी /Appellant

बनाम Vs.

ITO, Circle 3(1)(1),
Room No.666, 6th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Stany Saldanha

प्रतिवादी द्वारा/Respondent by : Ms. Beena Santosh

सुनवाई की तिथि/ Date of hearing : 02/08/2022

घोषणा की तिथि/ Date of pronouncement : 27/10/2022

आदेश/ ORDER

These three appeals by the assessee are directed against the order of Commissioner of Income Tax(Appeals)-8, Mumbai [in short 'the CIT(A)'] for the assessment year 2009-10(order dated 27/05/2019), assessment year 2010-11 (order dated 27/05/2019) and for the assessment year 2011-12 (order dated 19/06/2019), respectively.

2. Since, the grounds raised in all the appeals emanate from same set of facts, these appeals are taken up for adjudication together and are decided vide this composite order. For the sake of convenience these appeals are decided in seriatim of assessment years.

ITA NO.5544/MUM/2019 –A.Y. 2009-10:

3. Shri Stany Saldanha appearing on behalf of the assessee submitted that assessee is engaged in retail trading of various gift items. The assessment for assessment year 2009-10 was reopened on the ground that the assessee had obtained bogus entries aggregating to Rs.64,20,454/- from various (10) hawala operators. The Id. Authorized Representative of the assessee submitted that during the course of assessment proceedings the sales turnover declared by the assessee was accepted by the Assessing Officer. The assessee furnished documents viz. ledger accounts of the alleged hawala dealers, copies of bills/invoices, bank statement to show that the payments were made through banking channel. The only reason for making addition was that the parties failed to respond to the notices issued under section 133(6) of the Income Tax Act, 1961 [in short 'the Act'] by the Assessing Officer. The Assessing Officer made addition of the peak credit, i.e. Rs.11,54,999/- under section 69C of the Act. The Assessing Officer also made addition of 4% of alleged bogus purchases. The Assessing Officer further made addition of the alleged commission paid for procuring bogus purchase bills. Such commission was estimated at 1% of the bogus purchases. The Id. Authorized Representative of the assessee stated that the addition made was purely on surmises and conjectures. Aggrieved against the assessment order passed under section 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A). The

First Appellate Authority granted part relief to the assessee by restricting addition on account of bogus purchases by estimating suppressed profit @12.5% on such purchases. Thus, the CIT(A) restricted the addition to Rs.8,02,556/-. Now, the assessee is in appeal against the findings of CIT(A). The Id. Authorized Representative of the assessee submitted that the assessee has already declared over all G.P @ 15% on entire sales. No further addition is warranted in the light of documents furnished by the assessee and the high rate of G.P declared.

4. Per contra, Ms. Beena Santosh representing the Department vehemently defended the impugned order. The Id. Departmental Representative submitted that the assessee failed to discharge its onus in proving genuineness of the purchases and dealers. The notices issued by Assessing Officer under section 133(6) of the Act were received back unserved with remarks "not known/left/refused". The assessee also failed to produce the dealers from whom assessee had made purchases. No documentary evidence was furnished indicating movement of goods, such as lorry receipts, G.R, etc.

5. Both sides heard, orders of authorities below examined. It is an undisputed fact that the assessee has failed to discharge its onus in proving the authenticity of the dealers and genuineness of purchases made from such dealers. At the same time the Revenue has not disputed the sales turnover and the closing stock declared by the assessee. 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 it is only the profit element embedded in such unproved purchases that can be added. The assessee has declared G.P of 15% on sales. As against the addition of peak

credit under section 69C of the Act, estimation of suppressed profit @ 4% of bogus purchases and estimation of commission @ 1% of bogus purchases total aggregating to Rs.14,76,021/-, the CIT(A) has restricted the addition to Rs.8,02,556/- i.e. @12.5% of bogus purchases. I am of considered view that estimation of suppressed profit on unproved purchases by CIT(A) is on higher side. Taking into consideration entirety of facts, addition @ 5% of bogus purchases over and above G.P declared would meet the ends of justice. The appeal by assessee is thus, partly allowed.

ITA NO. 5546/MUM/2019 (A.Y. 2010-11) & ITA NO.5546/MUM/2019 (A.Y. 2011-12:

6. Both sides unanimously stated that the facts germane to the additions made are similar except for the amounts. In assessment year 2010-11, Assessing Officer made addition of Rs.1,40,169/-. The same was upheld by the CIT(A). Similarly, in assessment year 2011-12, the Assessing Officer made addition of Rs.30,654/- on account of bogus purchases. The CIT(A) upheld the same. Further, the Assessing Officer made addition on account of alleged commission paid for procuring bogus purchase bills by estimating commission @ 1%. Thus, addition of Rs.35,042/- was made in assessment year 2010-11 and addition of Rs.7,633/- was made in assessment year 2011-12.

7. The orders of authorities below examined. The additions have been made in both the impugned assessment years on account of unproved purchases. The Assessing Officer has made addition by estimating profit element @4% of unproved purchases and commission @ 1% of bogus purchases. The same has been upheld by CIT(A). In aggregate the addition is @5% of bogus purchases. There is no addition under section 69C of the Act in

assessment year 2010-11 and assessment year 2011-12. In appeal of the assessee for assessment year 2009-10(ibid), the addition on account of bogus purchases is sustained @ 5% of such purchases. Hence, I see no reason to interfere with the findings of CIT(A). The estimation of suppressed profit by Assessing Officer and CIT(A) is fair and reasonable. Consequently, appeal for assessment year 2010-11 and 2011-12 by the assessee are dismissed.

8. To sum up, appeal by the assessee for 2009-10 is partly allowed and appeal for assessment year 2010-11 and 2011-12 are dismissed.

Order pronounced in the open Court on Thursday the 27th day of October, 2022.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 27/10/2022

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., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

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