

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम.सी.", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " SMC ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आअसं. 2402 / मुं./ 2023 (नि. व. 2011-12)
ITA NO.2402/MUM/2023(A.Y.2011-12)

Vinipul Inorganics Pvt.Ltd.
1/3, Kandhari Colony, 2nd Road,
Chembur, Mumbai – 400 071.

PAN: AACCA-9261-A

..... अपीलार्थी / Appellant

बनाम Vs.

Income Tax Officer, Ward 14(3)(2),
Room No.458, 4th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा / Appellant by : Shri Rahul Hakani, Advocate
प्रतिवादी द्वारा / Respondent by : Shri Dharamveer D. Yadav, Sr. DR

सुनवाई की तिथि / Date of hearing : 17/01/2024
घोषणा की तिथि / Date of pronouncement : 18/01/2024

आदेश / ORDER

PER VIKAS AWASTHY, J.M:

This appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 02/06/2023, for the Assessment Year 2011-12.

2. The solitary issue in appeal is addition of Rs.15,65,241/- u/s. 69C of the Income Tax Act, 1961 [in short 'the Act'], on account of bogus purchases.

3. Shri Rahul Hakani appearing on behalf of the assessee submitted that this the second round of litigation. In the first round, the Tribunal in assessee's

appeal ITA No.504/Mum/2016 vide order dated 16/05/2018 had restored the issue to the file of Assessing Officer to make fresh assessment after allowing the assessee opportunity of cross examination of the parties. The Assessing Officer in second round again made addition of 100% of the alleged bogus purchases. The CIT(A) upheld the assessment order. The Id.Authorized Representative of the assessee submitted that the Tribunal in assessee's own case for Assessment Year 2009-10 and 2011-11 in identical set of facts has restricted the addition to 12.5% of the total bogus purchases less the G.P rate declared by the assessee. He placed on record copy of the order dated 21/12/2023 common for ITA No.2509/Mum/2023, for Assessment Year 2009-10 and ITA No.2510/Mum/2023, for Assessment Year 2010-11.

4. Per contra, Shri Shri Dharamveer D. Yadav representing the Department vehemently defended the impugned order. The Id. Departmental Representative submitted that the Tribunal vide order dated 16/05/2018 (supra) had directed the Assessing Officer to grant opportunity of cross examination of the concerned parties. In compliance of the Tribunal order, the Assessing Officer in remand proceedings issued notice u/s. 133(6) of the Act to the parties but none of the parties responded to the said notice. The assessee failed to furnish current address of the parties. No evidence was placed on record by the assessee to discharge its onus to show genuineness of the purchases. Hence, the Assessing Officer was constrained to disallow entire unproved purchases. The CIT(A) in the absence of any documentary evidence has rightly upheld the assessment order.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. The Tribunal in first round of litigation, while

deciding the appeal of assessee in ITA No.504/Mum/2016 vide order dated 16/05/2018 restored the issue back to the file of Assessing Officer to make fresh assessment after affording opportunity of cross examination to the assessee of the concerned parties. We find that in second round of assessment consequent to the order of Tribunal, the Assessing Officer issued notice u/s. 133(6) of the Act to the parties from whom the assessee claimed to have made purchases. None of the parties were available on the address given by the assessee, hence, effective opportunity of cross examination was not made available to the assessee. The assessee also failed to provide current/correct addresses of the parties from whom the assessee had made purchases.

6. Be that as it may, once the sales declared by the assessee has been accepted, the Assessing Officer could not have made addition of the entire alleged bogus purchases. Without purchases, there cannot be sales. The possibility of purchases from grey market to circumvent Sales Tax liability cannot be ruled out. In such like cases it is only the profit element embedded in alleged bogus purchases that has to be brought to tax [Re. 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].

We find that in appeals for the preceding Assessment Years ITA No.2509 & 2510/Mum/2023(supra), the Co-ordinate Bench in assessee's own case has estimated suppressed profit element on bogus purchases at 12.5%. The Bench has further reduced G.P ratio declared by the assessee from estimated element of profit i.e. 12.5% – G.P ratio declared by the assessee. Following the same analogy we hold that the suppressed profit element on

bogus purchases in the impugned assessment year at 12.5%. The Assessing Officer is directed to reduce G.P rate declared by the assessee in the impugned assessment year from 12.5%.

7. In the result, appeal of the assessee is partly allowed in the terms aforesaid.

Order pronounced in the open court on Thursday the 18th day of January, 2024.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य / ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/ Dated 18/01/2024

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल / Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, Mumbai