IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 442 OF 2018

Principal Commissioner of Income Tax-33 ….. Appellant
Vs.
Synergy Infrastructures ….. Respondent

Ms. Sushma Nagaraj a/w Ms. Kinjal Patel and Ms. Vibhuti Keny, for Appellant.
Mr. Ajay R. Singh a/w Mr. Akshay Pawar, for Respondent.

CORAM: K.R.SHRIRAM, J &
FIRDOSH P. POONIWALLA, J.

DATED : JUNE 28, 2023

P.C.

1. The following 4 questions of law are proposed:

> a) Whether on the facts & circumstances of the case and in law the ITAT is justified in confirming the action of the Ld. CIT(A) in restricting the addition to 12.5% of the bogus purchase amount without appreciating the fact that assessee failed the substantiate the claim of genuineness of purchases?
>
> b) Whether in law and on the facts and circumstances of the case, was the Tribunal not required to examine the facts of the case where the respondent was not in a position to bring the parties for cross examination, or to prove that the alleged materials were received by it ?
>
> c) Whether in law, and on the facts of the instant case was the Tribunal failed to appreciate certain significant facts brought out by the lower authorities that the respondent firm had failed to

> produce the parties for cross examination and there were no evidences of delivery of the 'purported goods'; thereby lending credibility to the fact that these are accommodation bills were only to claim expenditure thereby reducing the taxable income.
>
> d) Whether in law and in the facts of the instant case, where the Appellate authorities are satisfied that expenditure purported to have been paid for goods is not genuine, could not a part thereof be treated as deemed income as per Section 69C of the Act?

2. There are plethora of judgments to the extent of adhoc disallowances to be sustained with respect to the bogus purchases, what should be the percentage of the profit margin that has to be added to assessee's income etc. Mr. Singh has tendered a compilation of 6 judgments in which Courts have held that these are issues which would require evidence to be led. Whether the purchases were bogus or parties from whom such purchases were made were bogus are essentially questions of fact. We would also add that the Assessing Officer ('AO') in all fairness stated that the purchases by assessee, per se, are not the issue and these purchases were not being treated as bogus. He also admits that goods have entered into assessee's regular business. But AO says, assessee has not been able to give any convincing or cogent explanation as to how these goods happened to come in his possession and therefore, the purchases are not being treated as bogus or sham rather the expenditure incurred on such purchases is treated as unexplained.

3. In our view, having considered this portion of the assessment order, the CIT(A) and ITAT are correct in coming to the conclusion that only the profit element embedded in such purchases should be added to the income of assessee. The CIT(A) has added 12.5% which has been sustained by ITAT.

4. In our view, no substantial question of law arises.

5. Appeal dismissed.

(FIRDOSH P. POONIWALLA, J) **(K.R.SHRIRAM, J)**