

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.268/PUN/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Anil C. Mhaske,
650-B, Pratik Apartment,
Deccan Gymkhana,
Pune - 411004

PAN : ABIPM1477C

.....अपीलार्थी / Appellant

बनाम / V/s.

Additional Commissioner of Income Tax,
Range - 3, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.N. Doshi
Revenue by : Shri Achal Sharma

सुनवाई की तारीख / Date of Hearing : 22-01-2018

घोषणा की तारीख / Date of Pronouncement : 24-01-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-10, Pune, dated 08-01-2016 for the assessment year 2010-11.

2. The solitary issue raised by the assessee in appeal is against the addition of entire purchases to the tune of Rs.38,81,674/- made from M/s. Vidhi and Vrushti Trade Pvt. Ltd. stated to be Hawala Dealer.

3. The brief facts of the case as emanating from records are: The assessee is engaged in trading of Computer Hardware and Services. During the course of scrutiny assessment proceedings, the Assessing Officer observed that the assessee had made purchases worth Rs.38,81,674/- from M/s. Vidhi and Vrushti Trade Pvt. Ltd. To verify the genuineness of purchases made, the Assessing Officer issued notice u/s. 131 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") to the aforesaid company. However, notice sent by Assessing Officer through RPAD was returned back un-served with postal remarks 'the party has left the place'. Thereafter, the Assessing Officer deputed Inspector to visit the address of M/s. Vidhi and Vrushti Trade Pvt. Ltd. at Bombay. As per Inspector's report the said company never existed on the given address. Later on it transpired that M/s. Vidhi and Vrushti Trade Pvt. Ltd. is one of the Hawala Dealers as per list compiled by Sales Tax Department, Government of Maharashtra. Thus, the Assessing Officer made addition of entire amount of alleged purchases made from the said company by assessee.

Aggrieved by assessment order dated 06-03-2013, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) confirmed the entire addition holding it to be bogus purchases. Now, the assessee is in second appeal before the Tribunal.

4. Shri S.N. Doshi appearing on behalf of the assessee submitted that the assessee can show entire trail of goods purchased and sold. The authorities below have erred in making addition of entire amount of bogus purchases. The ld. AR submitted that some minor additions can be made in respect of alleged bogus purchases. The ld. AR in support of his submissions placed reliance on the decision in the case of M/s. Chhabi Electricals Pvt. Ltd. Vs. Dy. Commissioner of Income Tax in ITA No. 795/PUN/2014 for assessment year 2010-11 decided on 28-04-2017.

5. On the other hand Shri Achal Sharma representing the Department vehemently supported the findings of Commissioner of Income Tax (Appeals) and prayed for confirming the same.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We have also considered the decision rendered in the case of M/s. Chhabi Electricals Pvt. Ltd. Vs. Dy. Commissioner of Income Tax (supra). It is an undisputed fact that M/s. Vidhi and Vrushti Trade Pvt. Ltd. from whom the assessee has made alleged purchases is a declared Hawala Dealer. Therefore, the purchases made by assessee from the said dealer cannot be accepted as genuine. The ld. AR has mentioned that average GP of industry to which the assessee belongs is 6% to 7%. The addition of entire purchases made by authorities below is not justified. It is only the element of profit embedded in such purchases that can be subject to tax. Taking into consideration entirety of facts we are of considered view that some GP addition is required to be made. In our considered view addition of 12.5%

of bogus purchases over and above the GP already declared by assessee would meet the ends of justice. Our this estimation finds support from the decision of Hon'ble Gujarat High Court in the case of Commissioner of Income Tax Vs. Sumit P. Sheth (356 ITR 451). We hold and direct, accordingly. Thus, the impugned order is modified in the terms aforesaid.

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

Order pronounced on Wednesday, the 24th day of January, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 24th January, 2018
RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-10, Pune
4. The Pr. Commissioner of Income Tax-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune