

आयकर अपीलीय अधिकरण
IN THE INCOME TAX APPELLATE TRIBUNAL

मुंबई पीठ "एसएमसी"
MUMBAI BENCH "SMC", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य एवं
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
SHRI G.MANJUNATHA, ACCOUNTANT MEMBER
आअसं. 7053/मुं/2018 (नि.व.2010-11)
ITA NO.7053/MUM/2018(A.Y.2010-11)

ITO -26(2)(3)

Building No.C-11, 7th Floor,
Room No.709, Prayakshakar Bhavan,
Bandra Kurla Complex, Bandra(E)
Mumbai 400 051

..... अपीलार्थी /Appellant

बनाम Vs.

Shri Nalin Omprakash Pahuja,
Prop. of M/s. Shakti International,
6, Pahuja Industrial Estate,
Saki Naka, Mumbai 400 072
PAN:AGEPP 4217E

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. R.Kavitha

प्रतिवादी द्वारा/Respondent by : Shri Pramod A. Rasam

सुनवाई की तिथि/ Date of hearing : 17/02/2020

घोषणा की तिथि/ Date of pronouncement : 20 /03/2020

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax(Appeals)-38 Mumbai (in short 'the CIT(A)') dated 04/06/2018 for the assessment year 2010-11.

2. The brief facts of the case as emanating from record are: The assessee is engaged in the business of manufacturing engineering goods and is 100% export oriented unit. The assessment for assessment year 2009-10 was re-opened by the Assessing Officer on the ground that assessee has obtained bogus purchase bills aggregating to Rs.34,86,460/- from the declared hawala dealers. The Assessing Officer made disallowance of 25% of the alleged non-genuine purchases i.e. Rs.8,71,615/-. Aggrieved against the assessment order dated 04/03/2016 passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act'), the assessee filed appeal before the CIT(A). The first appellate authority, after examining the facts and documents on record granted part relief to the assessee by restricting the disallowance to 12.5% of the alleged bogus purchases. Against the aforesaid findings of the CIT(A), the Revenue is in appeal before the Tribunal.

3. Ms. R. Kavitha, representing the Department submitted that the Assessing Officer in a very fair and justified manner had made disallowance in respect of bogus purchase bills obtained by the assessee at 25% of such bogus purchases. The CIT(A) has further reduced the disallowance to 12.5% of the bogus purchases without considering the fact that the average GP of the assessee for assessment years 2007-08, 2008-09, 2011-12 and 2012-13 is 12.74% and the GP declared by the assessee in the impugned assessment year is 17.17%. The Id. Departmental Representative contended that the GP determined by the Assessing Officer on the bogus purchases at 25% is fair and justified.

4. On the other hand, Shri Pramod A. Rasam, appearing on behalf of the assessee vehemently defended the impugned order and prayed for dismissing the appeal of the Revenue. The Id. Authorized Representative for the assessee

submitted that the CIT(A) had estimated GP at 12.5% on alleged bogus purchases after considering all the facts including the average GP of the assessee in the past and the subsequent assessment years, as well as the GP declared by the assessee in the impugned assessment year. The Id. Authorized Representative for the assessee prayed for upholding the impugned order and dismissing the appeal of Revenue.

5. We have heard the rival sides and have perused the orders of authorities below. The assessee has allegedly obtained bogus purchase bills aggregating to Rs.34,86,460/-. The Assessing Officer has made disallowance of 25% on the aggregate alleged bogus purchases. On appeal, the CIT(A) has reduced the disallowance on the alleged bogus purchases to 12.5%. We have observed that average of GP as declared by the assessee in assessment years 2007-08, 2008-09, 2011-12 and 2012-13 is 12.74%. The GP declared by the assessee in the impugned assessment year is 17.17%. The GP estimated by CIT(A) @ 12.5% on the alleged bogus purchases, is very close to the average of the GP in the preceding and succeeding assessment years. Taking into consideration entirety of facts, we find no reason to interfere with the findings of CIT(A), hence, the same are upheld and the appeal of the Revenue is dismissed.

6. In the result, appeal by the Revenue is dismissed.

Order pronounced in the open court on Friday the 20th day of March, 2020.

S d/-

(G.MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 20/03/2020

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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai