

आयकर अपीलिय अधिकरण

मुंबई पीठ "डी "

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "D", MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य एवं

श्री राजेश कुमार , लेखा सदस्य के समक्ष

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

आअसं. 893/मुं/2019 (नि. व.2010-11)

ITA NO. 893/MUM/2019 (A.Y.2010-11)

The ACIT 24(2),

Room No.613, 6th Floor,

Piramal Chambers,

Lalbaug, Parel,

Mumbai 400012

..... अपीलार्थी /Appellant

बनाम Vs.

Mohd. Rafiq Navlakhiya

401, June Apartments,

Gautam Lane-2, Andheri (W),

Mumbai-400058.

PAN: ACQPN5792

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Vijay Jaiswal [DR (CIT)]

प्रतिवादी द्वारा/Respondent by : Shri Virag Shah (AR)

सुनवाई की तिथि/ Date of hearing : 19/10/2020

घोषणा की तिथि/ Date of pronouncement : 26/10/2020

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the revenue is against the order of Commissioner of Income-Tax (Appeals)-36, Mumbai [In short '(CIT(A)'] dated 28.11.2018 for the Assessment Year 2010-11.

2. The brief facts of the case as emanating from records are: The assessee is a trader and dealer of telecommunication equipments. On the basis of information received from Maharashtra Sales Tax Department the assessment for A.Y. 2010-11 was re-opened on the ground that the assessee has obtained bogus purchase bills to the tune of Rs. 2,81,77,639/- from notified hawala dealers. The Assessing Officer estimated gross profit on bogus purchases @ 13% and made addition of Rs. 36,63,093/-.

Aggrieved against the assessment order dated 11.02.2016 passed under section 143(3) r.w. section 147 of the Income Tax Act, 1961 (hereinafter referred 'the Act'), the assessee filed appeal before the CIT(A). The First Appellate Authority after examining the fact of case and considering the average gross profit in the line of electronic trade restricted the addition to 8% gross profit on bogus purchases. Against the findings of CIT(A), the revenue is in appeal before the Tribunal.

3. Shri Vijay Jaiswal representing the department vehemently defended the assessment order and prayed for setting-aside the findings of CIT(A) and restoring the addition made in assessment order.

5. Per contra, Shri Virag Shah appearing on behalf of the assessee vehemently defended the order of CIT(A). The Id. AR submitted that Gross Profit @ 13% estimated by Assessing Officer was very much on the higher side. The AR furnished Trading, Profit & Loss A/c for the Financial Year ended on 31.03.2010 to show that the Gross Profit of assessee for the impugned Assessment Year was 8.98% and the CIT(A) has made addition in line with the Gross Profit of the assessee.

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. Admittedly, the assessee had indulged in obtaining bogus purchase bills from hawala dealers. The assessee could not furnish the documents viz. Delivery challans, Lorry receipts, stock register etc. to substantiate trail of goods. The Assessing Officer estimated Gross Profit on such unproved purchases @ 13%. In first appellate proceedings, the CIT(A) reduced the Gross Profit to 8%. The assessee has filed copy of audited accounts for the Financial Year 2009-10. As per the documents furnished by the assessee, the Gross Profit for the period relevant to Assessment Year under appeal is 8.98%.

7. We are of considered view that the Gross Profit estimated by CIT(A) is nearly the same as declared by the assessee. We find no reason to disturb the order of CIT(A), hence, the same is upheld and the appeal of revenue is dismissed sans merit.

8. In the result, appeal of the revenue is dismissed.

Order pronounced in open Court on **Monday** the **26th** day of October, 2020.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 26/10/2020

S.K., PS

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL
MEMBER

प्रतिलिपि अग्रेषित **Copy 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