

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी"
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 2460/मुं/2019 (नि.व.2011-12)
ITA NO. 2460/MUM/2019 (A.Y.2011-12)

Omprakash Kanaram Patel 46-A Wing, Ganjawala Apartment, S.V. P. Road, Borivali (W), Mumbai 400 092	बनाम/ Vs.	The ITO -32(2)(4) Room No.306, C-11, Pratyaksha Kar Bhavan, Bandra Kurla Complex, Bandra (W), Mumbai 400 051
PAN/GIR No:ALKPP6740P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	None
Revenue by	:	Shri Ajay Pratap Singh (DR)

सुनवाई की तारीख/ Date of Hearing	:	14/10/2020
घोषणा की तारीख / Date of Pronouncement	:	23/10/2020

आदेश / ORDER

This appeal by the assessee is directed against the order of Commissioner of Income-Tax (Appeals)-46, Mumbai [in short 'CIT(A)'] dated 27.02.2019 for the Assessment Year 2011-12.

2. The brief facts of the case as emanating from the records are: The assessee is a trader in building material. The assessment for Assessment Year 2011-12 in the case of assessee was re-opened on the basis of information received by DGIT (Investigation) from Maharashtra Sales Tax Department that the assessee has indulged in obtaining bogus purchase bills aggregating to Rs. 1,36,88,928/- from various hawala dealers. The Assessing Officer estimated

Gross Profit on non-genuine purchase at 12.5%. and made addition of Rs. 17,11,116/-. Aggrieved against the assessment order dated 18.12.2015 passed under section 143(3) r.w.sec. 147 of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), the assessee filed appeal before the CIT(A). The CIT(A) vide impugned order upheld the findings of the Assessing Officer and dismissed the appeal of assessee in toto. Hence, the present appeal by the assessee.

3. Shri Ajay Pratap Singh representing the department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

4. Submissions made by Departmental Representative (DR) heard and orders of authorities below examined. The assessee has purportedly obtained bogus purchase bills to the tune of Rs. 1,36,88,928/- from various hawala dealers. The assessee failed to prove trail of goods, though the payments were made against alleged bogus bills through banking channel.

5. Admittedly, the department never raised any doubt over the sales declared by the assessee. The Assessing Officer held that the assessee has made purchases from the grey market and had obtained corresponding bogus bills from hawala operators. The Assessing Officer estimated Gross Profit on bogus purchase @ 12.5% and thus made addition of Rs. 17,11,116/-. In First Appellate Proceedings, the findings of the Assessing Officer were confirmed by the CIT(A). Taking into consideration entirety of facts, I am of considered view that Gross Profit estimated by Assessing Officer/CIT(A) is on the higher side. In

my considered view the ends of justice would meet, if the gross profit is estimated @ 8% of the bogus purchases. The appeal of the assessee is partly allowed in the term aforesaid.

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

Order pronounced in the open Court on **Friday** the **23rd** day of October, 2020.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL
MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 23/10/2020

S.K., PS

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.आपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai