

आयकर अपीलिय 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. 2448/मुं/2019 (नि.व.2010-11)  
ITA NO. 2448/MUM/2019 (A.Y.2010-11)

Clonto Lobo 21, Shreepal Services Industrial Estate, Pavanbaug, Chincoli, Malad (W), Mumbai-400054	<b>बनाम /</b> Vs.	ITO-30(1)(2) Room No. 505, C-13, 5 <sup>th</sup> Floor, Pratyakshkar Bhavan, BKC, Bandra (E), Mumbai-400051.
PAN/GIR No: AABPL6175E		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	None
<b>Revenue by</b>	:	Shri Ajay Pratap Singh (DR)

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	14/10/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	26/10/2020

आदेश / ORDER

This appeal by the assessee is against the order of Commissioner of Income-Tax (Appeals)-41, Mumbai [In short 'the CIT(A)'] dated 25.02.2018 for the Assessment Year 2010-11.

2. The brief facts of the case as emanating from the records are: The assessee is engaged in manufacturing of Cam for packaging industry. The assessment for Assessment Year 2010-11 in the case of assessee was re-

opened on the basis of information received by DGIT (Investigations) that the assessee has indulged in obtaining bogus purchase bills aggregating to Rs. 5,30,994/- from hawala dealers. The Assessing Officer in the re-assessment proceedings estimated Gross Profit @ 18.86% on unproved purchases and made addition of Rs. 95,820/- on account of bogus purchases.

Aggrieved by the assessment order dated 29.01.2016 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 First Appellate Authority (FAA) held that the entire bogus purchases should have been added and accordingly issued enhancement notice under section 251(2) of the Act. The CIT(A) vide impugned order made addition of the entire alleged bogus purchases. 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. In ground no.3 of the appeal, the assessee has assailed the action of CIT(A) in enhancing the addition in respect of bogus purchases. A perusal of the assessment order shows that the assessee has furnished copies of invoices and the ledger accounts of the parties. The plea of assessee is that the payments were made through account payee cheques which were duly reflected in the bank statement and the material purchased was further sold. The sale proceeds have been duly credited in the Profit & Loss Account. However, the assessee was not able to substantiate trail

of goods. Delivery challans, Lorry receipts, stock register etc. were not produced by the assessee. Further, the assessee failed to produce the parties from whom the goods were purchased.

5. Undisputedly, the department never questioned the sales declared by the assessee. Without purchases there cannot be sales, therefore, the only presumption that can be drawn is that the assessee made purchases from grey market and obtained bogus purchase bills. It is only the profit element embedded in the entire bogus transactions that can be brought to tax. The Assessing Officer after considering the Tax Audit Report of the assessee and Gross Profit declared by the assessee in the impugned assessment year, estimated Gross Profit at 18.86% on the bogus purchase. I find assessment order fair and reasonable. The findings of the CIT(A) on the issue are perverse and hence, set-aside. The ground no.3 of the appeal is partly allowed in the terms aforesaid.

6. In Ground No.4 of the appeal, the assessee has assailed addition of Rs. 1,60,251/- made by CIT(A). The assessee has claimed the sales tax payments to the tune of Rs. 1,60,251/- in respect of bogus purchases. The assessee has furnished evidence in the form of challan to show that the sales tax was actually paid by the assessee in respect of accommodation entries. It is an undisputed fact that the sales tax on bogus purchase bills were indeed paid by the assessee. The assessee's claim of sales tax expenditure has not been disputed by the department. I find no merit in the reasoning given by the CIT(A) in making the addition. Accordingly, the addition of Rs. 1,60,251/- is deleted. The ground of appeal no.4 is allowed.

7. The assessee in ground of appeal no. 1 & 2 has assailed re-opening of assessment. The assessee has impugned re-opening for the first time before the Tribunal. No such ground was raised before the First Appellate Authority. Since, no material is available before the Bench to adjudicate this issue and relief has been granted to the assessee on merits of the addition, ground no. 1 & 2 of the appeal are not deliberated upon at this stage.

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

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

**Sd/-**

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL  
MEMBER

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

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

BY ORDER,

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(Dy./Asstt. Registrar)  
ITAT, Mumbai