

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. 2455/मुं/2019 (नि.व.2009-10)
ITA NO. 2455/MUM/2019 (A.Y.2009-10)

Shri Jitendra S. Patel 202, Jolly Apartment Co-op Hsg Soc, Kiral Road, Ghatkopar (W), Mumbai-400086	बनाम / Vs.	ITO-27(1)(5) 4 th Floor, Tower No.6, Vashi Railway Complex, Vashi- 400703.
PAN/GIR No: AAAPP5525F		
(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	:	26/10/2020

आदेश / ORDER

This appeal by the assessee is directed against the order of Commissioner of Income-Tax (Appeals)-26, Mumbai [In short 'the CIT(A)'] dated 18.02.2019 for the Assessment Year 2009-10.

2. The brief facts of the case as emanating from the records are: The assessee is a trader in Timber and Plywood. The assessment for Assessment Year 2009-10 in the case of the assessee was re-opened on the ground that the assessee has indulged in obtaining bogus purchase bills from hawala dealers declared by Maharashtra Government. The Assessing Officer in the

assessment proceedings made addition of Rs. 16,83,269/- u/s 69C of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in respect of bogus purchases. The addition was made on the basis of combined peak credit standing in the name of hawala dealers. Aggrieved against the assessment order dated 27.03.2015 passed under section 143(3) r.w.sec. 147 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) restricted the addition to 8% of the bogus purchases by following the order of Tribunal in assessee's own case in Assessment Year 2010-11. Still aggrieved, the assessee is in appeal before the Tribunal.

3. Shri Ajay Pratap Singh representing the department vehemently defended the impugned order and submitted that the CIT(A) has granted relief to the assessee by following the order of Tribunal in assessee's own case for Assessment Year 2010-11 decided in ITA No. 391/Mum/208 vide order dated 09.05.2018. Once the relief has been granted to the assessee by the CIT(A) in accordance with his own submissions. Now the assessee cannot assail the findings of CIT(A).

4. We have heard the submission made by Departmental Representative (DR) and have examined the order of the authorities below. The assessee in appeal has assailed the findings of CIT(A) in confirming the addition by estimating Gross Profit @ 8% on bogus purchase.

5. A perusal of the impugned order shows that the assessee apart from making submissions on merit has also placed reliance on the order of Tribunal in ITA No. 391 / Mum/2018 (supra) in his own case. The CIT(A) decided the

appeal of assessee in accordance with the aforesaid order of the Tribunal. For the sake of completeness, the relevant extract of the impugned order is reproduced herein below:

“Appellant has stated that in appellant’s own case for A.Y. 2010-11 Hon’ble ITAT SMC Bench, Mumbai in ITA No. 391/Mum/2018 vide order dated 09/05/2018 has reduced the profit rate to 8% on the similar set of facts. Respectfully following the order of Hon’ble ITAT, Mumbai the addition is restricted to 8% of the bogus purchases of Rs. 57,07,449/-. This ground of appeal is ‘Partly Allowed’.”

6. Here it would be relevant to mention that the assessee in para 12 of the written submission before the CIT(A) admitted that gross profit declared during the year is 8.44% and in para 13 of the submissions relied on Tribunal order in assessee’s own case for AY 2010-11. The relevant part of assessee’s submission before the First Appellate Authority are reproduced herein below:

“12. Appellant states that the GP ratio followed since last few years has not all been disturbed. The Gross profit declared during this year 8.44%, therefore, any additions to profit is unviable, since the as per the GP rate declared it impossible for any industry to sustain.

13. In appellant’s own matter Hon’ble ITAT for the AY 2010-11 looking the same facts and circumstances in ITA No. 391/M/2018 has reduced the GP and added the gross profit @ 8%. Copy of the said judgment is enclosed herewith for your ready reference.”

7. The assessee has not raised above contentions as an alternate plea or without prejudice to the other pleas raised in written submissions. The CIT(A) has made a specific observation that the facts are similar in both the assessment years. The CIT(A) after considering the facts and the order of

Tribunal restricted the gross profit to 8% on bogus purchases. In the light of above facts, I see no reasons to interfere with the order of CIT(A). The same is upheld and the appeal of the assessee is dismissed.

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

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

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL
MEMBER

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

S.K., PS

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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai