

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. 1199/मुं/2019 (नि. व.2009-10)

ITA NO. 1199/MUM/2019 (A.Y.2009-10)

ITO 17(2)(3),

Room No.123B, 1st Floor,

Aayakar Bhavan,

Mumbai 400003

..... अपीलार्थी /Appellant

बनाम Vs.

M/s Manilal Sanghvi (Bombay)

158/160, Narayan Dhuru Street,

Masjid Bunder,

Mumbai-400003.

PAN: AAAFM2359N

..... प्रतिवादी/Respondent

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

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 22/10/2020

घोषणा की तिथि/ Date of pronouncement : 27/10/2020

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the revenue is directed against the order of Commissioner of Income-Tax (Appeals)-57, Mumbai [In short ('the CIT(A)'] dated 26.12.2018 for the Assessment Year 2009-10.

2. The brief facts of the case as emanating from records are: The assessee is a dealer in conveyor belts, v belts and engineering products. On the basis of information received from Sales Tax Department, Government of Maharashtra, the assessment for A.Y. 2009-10 in the case of assessee was re-opened. As per the information received, the assessee had obtained bogus purchase bills to the tune of Rs. 17,20,831/- from suspicious dealers. The Assessing Officer in assessment proceedings held that the assessee could not produce the parties from whom purchases were made and the documents to prove trail of goods allegedly purchased. The Assessing Officer estimated gross profit @ 12.5% on bogus purchases and made addition of Rs. 2,15,103/-. Aggrieved by the assessment order dated 22.09.2014 passed under section 143(3) r.w.sec. 147 of the Income Tax Act, 1961 (hereinafter referred 'the Act'), the assessee filed appeal before the CIT(A). The CIT(A) restricted the addition to 8% of the total purchases and thus, confirmed the addition of Rs. 1,37,666/-. Against the order of CIT(A), the revenue is in appeal before the Tribunal.

3. Shri Vijay Jaiswal representing the department submitted that though the tax effect involved in the appeal is less than the monetary limit prescribed by the Board vide Circular No. 17/2019 dated 08.08.2019, however, the present case falls under exception-10(e) of Circular dated 11.07.2018 and its subsequent amendment dated 20.08.2018. The Id. DR vehemently supporting the assessment order submitted that the assessee has failed to produce parties from whom alleged purchases were made and delivery challan, Lorry receipts etc. to substantiate that the goods were received by the assessee. In the light of the facts, the Assessing Officer was justified in estimating gross profit at 12.5% of bogus purchases. The Id. DR prayed for reversing the findings of CIT(A) and restoring the order of Assessing Officer.

4. We have heard the submissions made by Id. DR and have examined the orders of authorities below. It is an undisputed fact that the assessee has indulged in procuring bogus purchase bills from hawala operators. Since the sales made by assessee against alleged bogus purchases are not questioned by the department, the possibility is that the assessee might have procured goods from grey market and thereafter obtained bogus bills from entry providers. In these facts, it is only the profit embedded in bogus purchase bills that has to be brought to tax. The estimation of gross profit at 12.5% by the Assessing Officer is on higher side, therefore, the CIT(A) estimated gross profit at 8% on bogus purchases. The estimation of gross profit at 8% by CIT(A) is fair and reasonable. We find no reason to interfere with the same. The impugned order is upheld and the appeal of revenue is dismissed.

5. No appeal filed by the assessee has been brought to our notice by the office Registry. In case there is cross appeal by the assessee assailing the order of CIT(A) for the impugned Assessment Year, the present order may be recalled and both the appeals can be decided together.

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

Order pronounced in open Court on **Tuesday** the **27th** day of October, 2020.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 27/10/2020

S.K., PS

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL
MEMBER

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