

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी"
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 2985/मुं/2019 (नि.व.2010-11)
ITA NO. 2985/MUM/2019 (A.Y.2010-11)

ITO-28(1)(4),
Room No.330, 3rd Floor, Tower No.6,
Vashi Railway Station Complex,
Vashi, Navi Mumbai 400 703

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

Jigar Jasvantrai Shah,
202, 2nd Floor, Sector -28,
Kesar Villa Bldg.,Plot No.166,
Vashi, Navi Mumbai 400703
PAN:ABAPS7494K

: प्रत्यर्थी/ Respondent

Revenue by : Ms. Smita Verma
Assessee by : Shri L. L. Tolani

सुनवाई की तारीख/
Date of Hearing : 02/11/2020
घोषणा की तारीख /
Date of Pronouncement : 23/11/2020

आदेश/ ORDER

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-26, Mumbai (in short 'the CIT(A)') dated 13/02/2019 for the assessment year 2010-11.

2. Shri L.L. Tolani, appearing on behalf the assessee submitted that the assessee is engaged in the business of trading machinery parts for concrete equipments. In reassessment proceedings the Assessing Officer made addition of Rs.5,04,697/- on the ground that the assessee had obtained bogus purchase bills from declared hawala dealers. The Id.Authorized Representative of the assessee submitted that Assessing Officer made addition of the entire alleged bogus purchases, whereas the sales made by the assessee were accepted by the Assessing Officer. The assessee carried the issue in appeal before the CIT(A). The CIT(A) restricted the addition to 12.5% of the bogus purchases. The same has been accepted by the assessee. The appeal of Revenue is liable to be dismissed on account of low tax effect in the light of CBDT Circular No. No. 17/2019, dated 08-08-2019.

3. Ms. Smita Verma, representing the Department submitted that though the appeal of Revenue is below the monetary limit specified vide CBDT Circular No. 17/2019, dated 08-08-2019 but the case of assessee falls under exception mentioned in para 10(e) of Circular no. 03 of 2018 dated 11/07/2018 and amended on 20/08/2018 . The Id.Departmental Representative submitted that the assessee has indulged in obtaining bogus purchase bills from entry providers. The assessee has failed to substantiate genuineness of the purchase transactions. The notices issued to the parties under section 133(6) of the Income Tax Act, 1961 (in short 'the Act') on the addresses furnished by the assessee were returned unserved. The assessee could not produce the parties before the Assessing Officer to prove genuineness of the transactions. Hence, the Assessing Officer made addition of the entire bogus purchases.

4. Both sides heard, orders of the authorities below examined. The only issue in appeal by the Revenue is against restricting the addition to 12.5% of

the alleged bogus purchases as against 100% addition made by the Assessing Officer. Undisputedly, the Assessing Officer has not questioned the sales made by the assessee. Without purchases there cannot be sales, hence, the entire bogus purchases cannot be added. It is only the profit element embedded in bogus transaction that has to be brought to tax. The CIT(A) has estimated G.P @ 12.5% on bogus purchases. The same has been accepted by the assessee. The findings of the CIT(A) are reasonable and justified, hence, no interference is warranted. The impugned orders is upheld and the appeal of Revenue is dismissed.

5. In the result, appeal by the Revenue is dismissed.

Order pronounced on Monday the 23rd day of November, 2020.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 23/11/2020

Vm, Sr. PS(O/S)

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