

आयकर अपीलिय 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.2764/मुं/2019 (नि.व.2009-10)
ITA NO. 2764/MUM/2019 (A.Y.2009-10)

ITO, Ward 2(4),
2nd Floor, Mohan Plaza Bldg.,
Wayle Nagar, Khadakpada,
Kalyan West 421 301.

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

M/s. Shree Balaji Processors,
Plot No.B 21, Industrial Area,
Anand Nagar, Additional Ambernath 421 503
PAN: AAWFS4196D

: प्रत्यर्थी/ Respondent

Revenue by : Shri Saurabh Rai
Assessee by : None

सुनवाई की तारीख/
Date of Hearing : 29/10/2020
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)-3, Thane (in short 'the CIT(A)') dated 22/02/2019 for the assessment year 2009-10.

2. The brief facts of the case as emanating from records are: The assessee is running Wheat Flour Mill. On the basis of information received from Sales

Tax Department, Government of Maharashtra that the assessee has indulged in obtaining bogus purchase bills from entry providers, reassessment proceedings in the case of assessee for assessment year 2009-10 were initiated. In reassessment proceedings, the Assessing Officer made addition of Rs.3,68,290/- on account of bogus purchases made from Supreme Enterprises, a declared hawala dealer. Aggrieved by the assessment order dated 16/03/2015 passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act'), the assessee filed appeal before the CIT(A). The CIT(A) after examining the facts of the case and after seeking remand report from the Assessing Officer restricted the addition to Rs.46,036/- by estimating G.P @ 12.5% on bogus purchases. Against the relief granted by the CIT(A), the Revenue is in appeal before the Tribunal.

3. Shri Saurabh Rai, 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 specified 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 failed to prove genuineness of the purchases, hence, the Assessing Officer was justified in making addition of entire bogus purchases. The Id. Departmental Representative prayed for upholding the addition made by Assessing Officer.

4. Submissions made by Id. Departmental Representative heard. Orders of authorities below examined. The assessee is running a Wheat Flour Mill. The sales made by the assessee have not been disputed by the Department. Without purchases there cannot be sales. Ostensibly, the assessee has been making purchases from grey market and obtained corresponding bogus purchase bills from entry providers. In such type of bogus transaction it is only profit element embedded in the transaction that has to be brought to tax.

I concur with the finding of CIT(A) that entire amount of bogus purchases cannot be added in the hands of the assessee and some reasonable estimation of G.P on such bogus purchases has to be made. The impugned order is fair and reasonable, I see no reason to interfere with the same. The appeal of the Revenue is without any merit, therefore, the same is dismissed.

5. No appeal/cross objections filed by the assessee against the order of CIT(A) has been brought to the notice of Bench. In case at later point any appeal/cross objections by the assessee against impugned order of CIT(A) is found, then this order may be recalled and the cross appeals may be listed together for disposal by a common order.

6. In the result, appeal of 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 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