

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. 2396 /मुं/2019 (नि.व.2009-10)
ITA NO. 2396/MUM/2019 (A.Y.2009-10)

Income Tax Officer 21(1)(2),
104, First Floor,
Piramal Chambers, Parel,
Mumbai 400 012.

: अपीलार्थी/ Appellant

बनाम/ Vs.

Babaji D Shingan,
1st Floor, R-3, Adhayaru Industrial Sunmill-
Compund, Lower Parel, Mumbai 400 013.
PAN: AAYPS3767L

: प्रत्यर्थी/ Respondent

Assessee by : None
Revenue by : Shri Ajay Pratap Singh
सुनवाई की तारीख/
Date of Hearing : 13/10/2020
घोषणा की तारीख /
Date of Pronouncement : 08/01/2021

आदेश/ ORDER

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-48, Mumbai (in short 'the CIT(A)') dated 31/01/2019 for the assessment year 2009-10.

2. The brief facts of the case as emanating from the records are: The assessee is engaged in repair and maintenance of electrical pumps. The assessee filed his return of income for the impugned assessment year on 17/09/2009 declaring total income of Rs.12,92,814/-. On the basis of information received from DGIT(Inv.) the assessment in the case of assessee for assessment year 2009-10 was reopened. As

per the information received, the assessee has obtained bogus purchase bills amounting to Rs.6,04,919/- during the period relevant to the assessment year under appeal from various hawala dealers. During assessment proceedings the Assessing Officer asked the assessee to prove genuineness of the purchases. The assessee failed to produce documents like octroi receipts, transport receipts, stock register, etc. to show trail of goods allegedly purchased from hawala dealers. The assessee even failed to produce the supplier of the goods. The notice sent by the Assessing Officer under section 133(6) of the Income Tax Act, 1961 (in short 'the Act'), to the suppliers on the address provided by the assessee remain unresponded. Thus, the Assessing Officer made addition of the entire bogus purchases. Aggrieved by assessment order dated 12/03/2015 passed under section 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) after examining the facts and the submissions of the assessee concluded that since the Revenue has accepted the turnover of the assessee, the entire bogus purchases cannot be added. It is only the profit element embedded in the purchases from the grey market that has to be brought to tax. The CIT(A) estimated GP @ 25% on total bogus purchases and restricted the addition to Rs.1,51,230/-. Against the finding of CIT(A) the revenue is in appeal before the Tribunal.

3. Shri Ajay Pratap Singh, representing the Department vehemently defended the assessment order and prayed for reversing the finding of CIT(A). The Id. Departmental Representative submitted that the assessee has failed to prove genuineness of the purchases and the suppliers.

4. The submissions made by Id. Departmental Representative heard, orders of authorities below examined. The assessee has indulged in obtaining bogus purchase bills from the declared hawala dealers. Since, the assessee failed to prove genuineness of the purchases, the Assessing Officer made addition of entire such bogus purchases. Undisputedly, the Revenue has not questioned the work carried out by the assessee and total turnover declared. Once the total turnover has been

accepted addition of entire purchases cannot be made. It is only the profit embedded in the bogus purchases that has to be brought to tax. “(RE: PCIT vs. Paramshakhti Distributors Pvt. Ltd. in Income Tax Appeal No.413 of 2017 decided on 15/07/2019 by Hon'ble Bombay High Court)”. The CIT(A) has estimated GP @ 25% on such bogus purchases. I concur with the findings of CIT(A) and uphold the same. The appeal of Revenue is dismissed being devoid of merit.

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 any appeal/cross objections by the assessee against impugned order of CIT(A) is noticed, 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 by the Revenue is dismissed.

Order pronounced in the open Court on Friday, the 8th day of January, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 08/01/2021

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