

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. 2514 /मुं/2019 (नि.व.2010-11)
ITA NO. 2514/MUM/2019 (A.Y.2010-11)

ITO-28(3)(4),
Room No.320, 3rd Floor,
6th Tower, Vashi Rly Station Complex,
Navi Mumbai 400 703

: अपीलार्थी/ Appellant

बनाम/ Vs.

Shri Vinod Kumar Kothari,
Shop No.14, Plot No.1,
Om Arcade, Sector -29,
Turbhe, Navi Mumbai 400 705,
PAN:ADHPK0937A

: प्रत्यर्थी/ Respondent

Assessee by : None
Revenue by : Shri Ajay Pratap Singh
सुनवाई की तारीख/ : 15/10/2020
Date of Hearing
घोषणा की तारीख / : 11/01/2021
Date of Pronouncement

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 08/02/2019 for the assessment year 2010-11.

2. The brief facts of the case as emanating from the records are: The assessee is engaged in retail business of electric hardware and allied goods. The assessee filed his return of income for the impugned assessment year on 14/10/2010

declaring total income of Rs.3,54,720/-. On the basis of information received by DGIT(Inv.), Mumbai from Sales Tax Department, Government of Maharashtra, the assessment for assessment year 2010-11 in the case of assessee was reopened. As per the information received, the assessee has obtained bogus purchase bills aggregating to Rs.23,96,717/- during the period relevant to the assessment year under appeal from six 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. The assessee even failed to produce the suppliers 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 remained unresponded except one i.e. M/s. Manav Impex. The said supplier denied any business transactions with the assessee . Thus, the Assessing Officer made addition of the entire bogus purchases. Aggrieved by assessment order dated 29/02/2016 passed under section 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A) challenging the addition. The CIT(A) after examining the facts and the submissions of assessee restricted the addition to 12.5% of total bogus purchases. Against the relief granted by 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 failed to prove genuineness of the purchases and even could not produce suppliers of the goods to prove genuineness of suppliers. The Id. Departmental Representative placed reliance on the decision rendered by Hon'ble Supreme Court of India in the case of N.K. Proteins Vs. DCIT in SLP No.(C) 769 of 2017 decided on 16/01/2017 to uphold 100% addition made in the assessment order.

4. The submissions made by Id. Departmental Representative heard, orders of authorities below examined. The assessee has indulged in obtaining bogus purchase bills aggregating to Rs.23,96,717/- from the declared hawala dealers . The assessee failed to prove genuineness of the purchases and the suppliers. Therefore, the Assessing Officer made addition of entire such bogus purchases. In first appellate proceedings the CIT(A) held that since the sales of the assessee have not been disputed and without purchases there cannot be sales, it is only the profit embedded in the bogus purchases that has to be brought to tax. The CIT(A) restricted addition to 12.5% of bogus purchases. The findings of CIT(A) are in line with the judgment rendered in the case of 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. I concur with the findings of CIT(A) and uphold the same. The appeal of the 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 Monday, the 11th day of January, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 11 /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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai