

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एस एम सी", मुंबई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
BEFORE VIKAS AWASTHY, JUDICIAL MEMBER

आअसं. 2483/मुं/2019 (नि.व. 2009-10)  
ITA NO.2483/MUM/2019(A.Y.2009-10)  
आअसं. 2484/मुं/2019 (नि.व. 2010-11)  
ITA NO.2484/MUM/2019(A.Y.2010-11)

Shri Late Gunvantrai C Doshi,  
B-16, Raj Mayur, S.L.Road,  
Mulund (West), Mumbai 400 080.  
PAN:AABPD 1054E

..... अपीलार्थी /Appellant

बनाम Vs.

Commissioner of Income Tax (Appeals)-56,  
R.No.3101, 3<sup>rd</sup> Floor, B-Wing,  
Mittal Court, Nariman Point  
Mumbai -400 021.

..... प्रतिवादी/Respondent

Assessee by : None  
Revenue by : Shri Sanjay Sethi

सुनवाई की तिथि/ Date of hearing : 31/12/2020  
घोषणा की तिथि/ Date of pronouncement : 26/03/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

These two appeals by the assessee are directed against the order of Commissioner of Income Tax(Appeals)-56, Mumbai [in short 'the CIT(A)'] for assessment year 2009-10 and 2010-11, respectively. Both the impugned orders are of even date i.e. 05/05/2015. Since, the grounds raised in both the appeals are identical, these appeals are taken up together for adjudication and are disposed of by this combined order.

2. The brief facts of the case as emanating from records are: The assessee is a manufacturer and reseller of machinery and machinery parts. On the basis of information received from DGIT(Invn.) Mumbai, the assessment in the case of assessee for assessment year 2009-10 and 2010-11 were reopened. As per the information, the assessee had obtained bogus purchase bills for Rs.8,45,983/- in assessment year 2009-10 and for Rs.2,98,028/- in assessment year 2010-11 from various suspicious dealers declared as hawala operators. During the course of assessment proceeding the assessee produced ledger accounts and purchase bills. The notices issued by the Assessing Officer under section 133(6) of the Income Tax Act, 1961 (in short 'the Act') on the addresses furnished by the assessee were received back unserved with remarks 'not known'. In the absence of any cogent evidence and confirmations from the suppliers, the Assessing Officer made addition of the entire bogus purchases in both the impugned assessment years.

Aggrieved against the assessment order passed under section 143(3) r.w.s. 147 of the Act, the assessee filed appeals for the respective assessment years before the CIT(A). In the first appellate proceedings, the CIT(A) after considering the facts of the case and the Gross Profit (GP) declared by the assessee, restricted the addition to 12.5% of total bogus purchases. Identical orders have been passed by the CIT(A) for assessment years 2009-10 and 2010-11. Still aggrieved, the assessee is in appeal before the Tribunal for both the impugned assessment years assailing the profit estimated by the CIT(A) on bogus purchases.

3. Shri. Sanjay Sethi representing the Department vehemently defended the impugned orders for the respective assessment years and prayed for dismissing the appeals filed by the assessee. The Id. Departmental Representative submitted that the CIT(A) has passed a very reasoned and balanced order after considering the facts and various decisions and hence, should be sustained.

4. Submissions made by Id. Departmental Representative heard, orders of authorities below examined. The assessee has allegedly obtained bogus purchase bills from suspicious dealers. The assessee has failed to discharge his onus in proving genuine of the purchases and the dealers. The assessee could neither produce the dealers nor could furnish confirmations from them. Even the notices sent to the dealers remain unserved. At the same time I find that Assessing Officer has accepted the turnover declared by the assessee. Without purchases/inputs there cannot be sales. Therefore, entire alleged bogus purchases cannot be disallowed. The Hon'ble Jurisdictional High Court in the case of *PCIT vs. Paramshakti Distributors Pvt. Ltd. in Income Tax Appeal No. 413 of 2017 decided on 15/7/2019* has held that only profit element embedded in the bogus transactions has to be brought to tax. The CIT(A) has restricted the addition to 12.5% as against the G.P of 6.08% in assessment year 2009-10 and 6.14% in assessment year 2010-11 declared by the assessee. I am of considered view that GP estimated by the CIT(A) is on higher side. I deem it just and appropriate to restrict GP at 6.5% of the bogus purchases in each of the impugned assessment years. The impugned orders are accordingly modified and appeals by the assessee are partly allowed.

5. In the result, appeal by the assessee for assessment year 2009-10 and 2010-11 are partly accepted in the terms aforesaid.

Order pronounced in the open court on Friday the 26<sup>th</sup> day of March, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 26/03/2021

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**