

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 SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 6450/मुं/2019 (नि.व.2009-10)
ITA NO.6450/MUM/2019 (A.Y.2009-10)

Vikesh Babulal Jain
(Prop. of B.J. Metal & Alloys),
R. No. 8, 1st Floor, 59/65,
Gurukrupa Building,
Durgadevi Street,
Mumbai- 400004
PAN: AGPKJ6664K

..... अपीलार्थी /Appellant

बनाम Vs.

ITO Ward-19(3)(5),
Matru Mandir, Tardeo,
Mumbai-400007.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Satish R. Mody

प्रतिवादी द्वारा/Respondent by : Ms. Smita Verma

सुनवाई की तिथि/ Date of hearing : 05/05/2021

घोषणा की तिथि/ Date of pronouncement : 05/05/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

1. This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-29, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 09.08.2019 for the Assessment Year (AY) 2009-10.
2. Shri Satish R. Mody appearing on behalf of the assessee submitted that the assessee is engaged in trading of ferrous and non-ferrous metals. The assessment in the case of assessee for AY 2009-10 was re-opened on the basis of information

received from the Sales Tax Department, that the assessee has obtained bogus purchase bills aggregating to Rs. 1,32,99,451/- from various (10) dealers declared as hawala operators by the Sales Tax Department, Government of Maharashtra. During assessment proceedings, the assessee furnished copies of Ledger Accounts, copy of purchase invoices, bank statements etc. to prove genuineness of the purchases. However, the AO disallowed 12.5% of the total alleged bogus purchases and made addition of Rs. 16,62,430/-.

3. Aggrieved by the assessment order dated 23.03.2015 passed under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The assessee filed appeal before the CIT(A). The CIT(A) without appreciating facts and the gross profit (GP) declared by the assessee confirmed the addition at 12.5%. The Id. AR pointed that the assessee has declared GP of 2.85% of the total sales. The GP earned by the wholesalers in this line of business is 2.5% to 3.5%. The Id. AR further submitted that the appeal may be decided in accordance with the judgment of Hon'ble Bombay High Court in the case of PCIT vs. Mohd. Haji Adam & Co. in ITA No. 1004 of 2016 decided on 11.02.2019.

4. Per contra, Ms. Smita Verma representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. DR submitted that the assessee has failed to discharge his onus in proving genuineness of the purchases and the dealers. Notices were issued to the dealers under section 133(6) of the Act by the AO on the addresses furnished by the assessee. Notices were received back unserved as the addresses were either incomplete or incorrect. Further, the assessee failed to prove trail of goods as no Octry receipt, transport receipt, delivery challanes, inward register etc. were

produced by the assessee. The estimation of GP on bogus purchases at 12.5% is fair and reasonable, hence, the same should be sustained. .

5. Both sides heard, orders of authorities below examined. The assessee has allegedly obtained bogus purchase bills amounting to Rs. 1,32,99,452/- from declared hawala operators. During assessment proceedings, the assessee could neither produce dealers nor any confirmations from the dealers were furnished by the assessee. Thus, the assessee failed to prove the authenticity of the dealers and genuineness of the purchases.

6. The Hon'ble Bombay High Court in the case of PCIT vs. Paramshakti Distributors Pvt. Ltd. in ITA No. 413 of 2017 decided on 15.07.2019 has held that in the case of bogus purchase transactions, it is only the profit embedded in such purchases has to be brought to tax. In the present case, estimation of GP on bogus purchase at 12.5% by the AO/CIT(A) is on the higher side. Generally in trading of ferrous and non-ferrous metals, the GP ranges between 5 to 8%. Taking into consideration, entirety of facts, I am of considered view that estimation of GP at 5.5% of total bogus purchases would meet the ends of justice. The impugned order is modified accordingly.

7. In the result, appeal of the assessee is partly allowed in the terms aforesaid.

Order pronounced in the open court on **Wednesday**, the **5th** day of May, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 05/05/2021

SK, PS

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