

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. 5650/मुं/2019 (नि.व.2009-10)
ITA NO.5650/MUM/2019 (A.Y.2009-10)

ITO-20(3)(2),
R. No. 612, 6th Floor,
Piramal Chambers,
Lalbaug, Parel,
Mumbai-400012

..... अपीलार्थी /Appellant

बनाम Vs.

Samiullah M.K. Ansari,
Vaishali Tube Center,
2nd Lane Corner, Opp. Castrol Ltd.
Magazine Street, Darukhana,
Reay Road, Mumbai-400010.

PAN: AFNPA4055P

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Sushil Kumar Mishra

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 30/03/2021

घोषणा की तिथि/ Date of pronouncement : 28/05/2021

आदेश / ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-32, Mumbai [hereinafter referred to as 'the CIT(A)'] ' dated 17.06.2019 for the Assessment Year (AY) 2009-10.

2. The brief facts of the case as emanating from the records are: The assessee is engaged in trading of Iron & Steel. On the basis of information received from

the Sales Tax Department, Government of Maharashtra, the assessment for AY 2009-10 was re-opened. As per the information received, the assessee had obtained bogus purchase bills aggregating to Rs. 62,56,306/- from various (nine) hawala operators during the period relevant to AY under appeal. During assessment proceedings, the assessee failed to prove authenticity of dealers and genuineness of the goods purchased. Since the AO had accepted sales declared by the assessee, the AO estimated Gross Profit (GP) at 12.5% of bogus purchases and made addition of Rs. 7,82,038/-.

Aggrieved by the assessment order dated 20.03.2015 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) after examining the facts restricted the addition to Rs. 3,12,815/- by estimating GP @ 5% of bogus purchases. Against the findings of CIT(A), the Revenue is in appeal before the Tribunal.

3. Shri Sushil Kuamr Mishra representing the Department vehemently defended the assessment order and prayed for reversing the findings of CIT(A). The Id. DR submitted that the assessee had obtained bogus purchase bills from hawala operators. The assessee neither produce the dealers nor the assessee could furnish documentary evidence in the form of stock register, transport receipts, etc. to substantiate trail of goods. The estimation of GP by the AO at 12.5% of the bogus purchases was reasonable and thus, the same should be sustained.

4. Submissions made by Id. DR heard, orders of authorities below examined. Undisputedly, the assessee failed to discharge his onus in proving genuineness of

the purchases and authenticity of the dealers. The AO had accepted the sales turnover declared by the assessee, therefore, it is only the profit embedded in the alleged bogus purchases that has to be brought to tax. Generally, in trading of ferrous and non-ferrous metals, the GP ranges between 5% to 8%. Estimation of GP at 12.5% on bogus purchases by AO is on higher side. The CIT(A) has estimated GP at 5% and restricted the addition to Rs. 3,12,815/-. I find no infirmity in the impugned order, hence, the same is upheld and the appeal of Revenue is dismissed, being devoid of any merit.

Order pronounced in the open court on **Friday**, the **28th** day of May, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 28/05/2021

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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai