

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी" , मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" , MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 5818/मुं/2019 (नि.व 2010-11)
ITA NO.5818/MUM/2019(A.Y 2010-11)

Income Tax Officer 32(3)(3),
Room No.735, Kautilya Bhavan,
BKC, Bandra (E),
Mumbai – 400 051

..... अपीलार्थी /Appellant

बनाम Vs.

Sanjay K. Shah,
502, 5th Floor, Sreenathi Tower,
56th TPS Road, Borivali (W)
Mumbai 400 092

PAN: AAWFS-7410-A

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Sushil Kumar Mishra
प्रतिवादी द्वारा/Respondent by : Shri Tejas Shah
सुनवाई की तिथि/ Date of hearing : 01/04/2021
घोषणा की तिथि/ Date of pronouncement : 15/06/2021

आदेश/ ORDER

This appeal by the Revenue is against the order of Commissioner of Income Tax (Appeals) -46, Mumbai [in short 'the CIT(A)] dated 03/05/2019 for the assessment year 2010-11.

2. Shri Sushil Kumar Mishra representing the Department submitted that the assessment in the case of assessee for assessment year 2010-11 was reopened on the basis of information received from the Sales Tax Department, Government of Maharashtra and DGIT (Investigation), Mumbai. As per information received, the assessee had obtained bogus purchase bills amounting to Rs.32,01,509/- from various (7) hawala dealers. During the course assessment proceedings the assessee

failed to discharge his onus in proving genuineness of dealers and the purchases made from them. The Assessing Officer made addition of 12.5% of bogus purchases. The assessee carried the issue in appeal before the CIT(A). The CIT(A) restricted the addition to 8%. Now, the Revenue is in appeal assailing the findings of CIT(A) in restricting the addition to 8% of bogus purchases. The Id. Departmental Representative submitted that the disallowance made by Assessing Officer is fair and reasonable, hence, the same should be upheld.

3. On the other hand, Shri Tejas Shah appearing on behalf of the assessee strongly supported the order of CIT(A) and prayed for upholding the same and dismissing the appeal of Revenue.

4. Both sides heard, orders of authorities below examined. Undisputedly, the assessee failed to discharge his onus in proving genuineness of the dealers and the purchases made from them. The assessee has neither furnished confirmations from suspicious dealers nor the assessee has furnished documents to prove trail of goods. At the same time it is observed that the Assessing Officer has accepted sales turnover declared by the assessee. It is only the profit element embedded in bogus purchases that has to be brought to tax. In my considered view estimation of profit margin @ 12.5% by the Assessing Officer is on higher side. The CIT(A) has restricted the addition to 8%. I find no reason to interfere with the findings of CIT(A), hence, the same are upheld and the appeal by Revenue is dismissed being devoid of merit.

5. In the result, appeal by the Revenue is dismissed.

Order pronounced in the open Court on Tuesday, the 15th day of June, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 15/06/2021
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.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai