

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी"
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI MANOJ KUMAR AGRAWAL, ACCOUNTANT MEMBER.

आअसं.7976/मुं/2019 (नि.व.2009-10)
ITA NO. 7976/MUM/2019 (A.Y.2009-10)
आअसं.7977/मुं/2019 (नि.व.2010-11)
ITA NO. 7977/MUM/2019 (A.Y.2010-11)

Nimisha Nilesh Doshi,
701, Tower No.2- Limona
Runwal Anthurium,
LBS Marg, Opp Veena Nagar,
Mulund West, Mumbai 400 080.
PAN:AGXPD6917E

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

Income Tax Officer – 26(2)(7)
Kautilya Bhavan, Bandra Kurla Complex,
Bandra(E)
Mumbai 400 020.

: प्रत्यर्थी/ **Respondent**

Assessee by : Shri Bhadresh Doshi
Revenue by : Shri Sanjay Sethi
सुनवाई की तारीख/
Date of Hearing : 08/06/2021
घोषणा की तारीख /
Date of Pronouncement : 15/06/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

These two appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-40, Mumbai [in short 'the CIT(A)] for the assessment year 2009-10 dated 18/10/2019 and for assessment year 2010-11 dated

20/09/2019, respectively. Since, the issue involved in both the appeals is identical, these appeals are taken up together for adjudication and are decided by this common order.

ITA NO.7976/MUM/2019 –A.Y.2009-10:

2. Shri Bhadresh Doshi appearing on behalf of the assessee submitted that the assessee is a trader in hardware items, pipe fittings, iron and steel and electric goods. The assessment for assessment year 2009-10 was reopened on the ground that the assessee had obtained bogus purchase bills aggregating to Rs.21,47,588/- from various dealers declared as hawala operators. Further, the Assessing Officer made adhoc disallowance of 30% to 40% of business expenditure, viz. accounting charges, audit fees, commission expenses, conveyance and travelling charges, freight and transportation, office rent, etc. The Id.Authorized Representative of the assessee submitted that the assessee had submitted all relevant documents in support of the expenditure claimed. However, the Assessing Officer without examining the same made adhoc disallowance of Rs.1,94,292/-. The assessee filed appeal before the CIT(A) assailing against the assessment order dated 13/11/2014 passed under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (in short 'the Act'). The CIT(A) confirmed addition qua bogus purchases in toto. In respect of adhoc disallowance of office expenses, the CIT(A) restricted the same to 20%.

The Id.Authorized Representative of the assessee submitted that entire alleged bogus purchases cannot be added. The Assessing Officer has accepted the sales declared by the assessee. The Id. Authorized Representative for the assessee pointed that the assessee has accepted the addition in respect of bogus purchases @12.5% in preceding assessment years. The same percentage may be applied in the impugned assessment year for making disallowance on account of bogus purchases. The Id.Authorized Representative of the assessee further pointed that the G.P declared by the assessee in assessment year 2009-10 is 11.32%.

3. Shri Sanjay Sethi representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of the assessee. The Id. Departmental Representative submitted that the assessee has failed to discharge its onus in proving genuineness of purchases and authenticity of the dealers. With regard to disallowance of business expenses the Id. Departmental Representative submitted that the assessee has failed to furnish relevant documentary evidence substantiating expenditure claimed. Hence, the Assessing Officer made disallowance of 30% of such expenditure. The CIT(A) has reduced it to 20%, the order of CIT(A) is fair and reasonable.

4. Both sides heard, orders of authorities below examined. Undisputedly, the assessee has failed to substantiate genuineness of purchases made from alleged hawala operators. At the same time the sales turnover declared by the assessee has been accepted by the Assessing Officer. In such like transactions it is only the profit element embedded in such transactions that can be taxed, entire bogus purchases cannot be disallowed [Ref: PCIT vs. Paramshakti Distributors Pvt. Ltd., Income Tax Appeal No.413 of 2017 decided on 15th July, 2019]. The G.P rate declared by the assessee on regular transactions is 11.32%. The Id. Authorized Representative of the assessee has conceded that the disallowance on bogus purchases may be restricted to 12.5% in line with the disallowance made in previous assessment years. Taking into consideration entirety of facts, we deem it appropriate to restrict the disallowance on account of bogus purchases @ 12.5%. The ground No.1 of the appeal is partly allowed in the terms aforesaid.

5. In ground No.2 of appeal, the assessee has assailed disallowance of business expenditure. The Assessing Officer has made adhoc disallowance of 30% to 40% in respect of various expenditure claimed by the assessee. The disallowance of business expenditure was made by the Assessing Officer on the ground that no supporting evidences were filed by the assessee. The CIT(A) restricted the

disallowance to 20%. A perusal of the assessment order shows that the Assessing Officer has disallowed business expenditure on mere estimation. The Assessing Officer made flat disallowance of 30% on all business expenditure claimed by the assessee and disallowance of 40% was made in respect of conveyance and travelling expenditure. The manner of making disallowance by the Assessing Officer indicates that Assessing Officer has not examined the books or the relevant documents. The disallowance has been made merely on surmises and conjectures, without pointing short comings in the books and supporting documents maintained by the assessee. The CIT(A) has reduced disallowance to 20% again on estimations. We find no cogent reason to sustain disallowance in respect of business expenditure, accordingly, the same is directed to be deleted. The assessee succeeds on ground No.2 of the appeal.

6. In the result, appeal of the assessee is partly allowed.

ITA No.7977/Mum/2019-A.Y.2010-11:

7. The Id.Authorized Representative of the assessee submitted that the solitary ground raised in the appeal is with respect to disallowance made on account of bogus purchases. The Assessing Officer made 100% disallowance of alleged bogus purchases. The CIT(A) confirmed the finding of Assessing Officer. The reasons for making disallowance in assessment year 2010-11 is identical to assessment year 2009-10. The Id.Authorized Representative of the assessee further pointed that there is discrepancy in the amount of bogus purchases. The purchases made from alleged hawala operators aggregate to Rs.97,154/-, whereas in the assessment order the amount was inadvertently mentioned as Rs.16,92,653/-. The assessee had pointed this mistake during the First Appellate proceedings. The CIT(A) sought remand report from the Assessing Officer. The Assessing Officer vide remand report dated 14/08/2019 accepted that aggregate of bogus purchases from three parties is Rs.97,154/- and the remaining amount is to be deleted. However, the CIT(A) again

erred in making addition of amount mentioned in the assessment order. The Id.Authorized Representative of the assessee referred to the remand report at page 21 to 23 of the Paper Book.

8. The Id.Departmental Representative vehemently defended the impugned order. However, the Id.Departmental Representative fairly admitted that as per the remand report furnished by the assessee in Paper Book correction has been made in the amount of bogus purchases.

9. Both sides heard. The solitary issue in appeal is with regard to addition made in respect of bogus purchases. In so far as the addition on account of bogus purchases is concerned the same is restricted to 12.5% for the reasons stated in the detailed order for assessment year 2009-10.

10. The Id.Authorized Representative of the assessee has pointed that there is an error in the amount of bogus purchase mentioned in assessment order and impugned order. We find that in the assessment order the addition on account of bogus purchases has been made at Rs.16,92,657/-. The contention of the assessee is that the addition has been made on account of bogus purchases from three dealers, wherein the aggregate of amount involved is Rs.97,154/-. This error was pointed by the assessee before the CIT(A). The CIT(A) sought remand report from the Assessing Officer. However, the CIT(A) failed to consider the remand report. The relevant extract of remand report dated 14/08/2019 from the Assessing Officer is reproduced herein below:

"5.2 Therefore, out of the total addition of Rs.16,92,653/- u/s .69C during the assessment proceedings u/s. 143(3) of the I.T. Act, 1961, as mentioned in para 2 above only the addition in respect of the bogus purchases made in the following parties appears to be correct:

1) Payal Enterprise	Rs. 46,980/-
2) MR Corporation	Rs. 48,094/-
3) Siddivnyak Corporation	Rs. 2,080/-
Total :	Rs. 97,154/-

Accordingly, the remaining amount of Rs.15,95,499/- i.e.16,92,653 – 97,154 needs to be deleted.”

The Id. Departmental Representative has not disputed the remand report. Thus, in the light of remand report, the total amount of bogus purchases is Rs.97,154/-. The Assessing Officer is directed to restrict addition on account of bogus purchases to 12.5% of Rs. 97,154/-

11. In the result, appeal by the assessee is partly allowed in the terms aforesaid.
12. To sum up, both appeals by the assessee are partly allowed.

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

Sd/-

(MANOJ KUMAR AGRAWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai