

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. 5727/मुं/2019 (नि.व 2009-10)  
ITA NO.5727/MUM/2019 (A.Y 2009-10)

Income Tax Officer-20(1)(2)  
Room No.119, 1st Floor, Piramal Chambers,  
Lal Baug, Parel,  
Mumbai 400 012

..... अपीलार्थी /Appellant

बनाम Vs.

Ashok Mahadev Naik,  
8-10, Rockside, Walkeshwar Road,  
Mumbai – 400 027.

PAN: **AACPN 1844K**

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Sushil Kumar Mishra

प्रतिवादी द्वारा/Respondent by : None

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 directed against the order of Commissioner of Income Tax (Appeals)-32 Mumbai [in short 'the CIT(A)'] dated 17/06/2019 for the assessment year 2009-10.

2. Shri Sushil Kumar Mishra representing the Department submitted that the assessee has obtained bogus purchase bills to the tune of Rs.1,44,965/- from M/s. Saffron Stainless during the period relevant to assessment year under appeal. Since, the assessee failed to discharge his onus in proving genuineness of purchases and the

aforesaid dealer, the Assessing Officer made addition of entire bogus purchases. During assessment proceedings the notice issued under section 133(6) Income Tax Act,1961 ( in short 'the Act') to the dealer by the Assessing Officer remained unanswered. In First Appellate proceedings, the CIT(A) restricted the addition on account of bogus purchases to Rs.6,000/-. The Id. Departmental Representative submitted that the CIT(A) has failed to take into consideration that the assessee could not prove genuineness of purchases. The dealer from whom the assessee had made bogus purchases is a declared hawala operator. The Id. Departmental Representative further pointed that this appeal by the Revenue falls under exceptions provided in para 10(e) of Circular dated 20/08/2018.

3. Submissions made by Id. Departmental Representative heard, orders of authorities below examined. Undisputedly, the assessee failed to prove genuineness of purchases and authenticity of the vendor/dealer from whom disputed purchases were made. At the same time the Assessing Officer has accepted the sales turnover declared by the assessee. Without purchases there cannot be sales. Therefore, entire alleged bogus purchases cannot be added, it is only the profit element embedded in such transactions that can be taxed [Re: PCIT vs. M/s. Paramshakti Distributors Pvt. Ltd., Income Tax Appeal No.413 of 2017, decided on 15<sup>th</sup> July, 2019 by Hon'ble Bombay High Court]. The CIT(A) has restricted the addition to Rs.6,000/- i.e. to the extent of VAT amount saved by the assessee on such bogus purchases. I find no infirmity in the impugned order, therefore, the same is upheld and appeal of the Revenue is dismissed being devoid of any merit.

Order pronounced in the open Court on Tuesday, the 15<sup>th</sup> 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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**