

आयकर अपीलीय 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. 5803/मुं/2019 (नि.व 2009-10)
ITA NO.5803/MUM/2019 (A.Y 2009-10)

Income Tax Officer-32(3)(2)
Room No.734, 7TH Floor, Kautilya Bhavavan,
BKC, Bandra (E),
Mumbai 400 051

..... अपीलार्थी /Appellant

बनाम Vs.

Shri Yogesh D Dabhade,
2605,Grandeur Vasant Marvel C,
Off Western Express Highway,
Borivali (West), Mumbai 400 092

PAN: **AAOPT-3897L**

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/Appellant by : Shri Sushil Kumar Mishra

प्रतिवादी द्वारा/Respondent by : Shri Manish Sheth

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)-46, Mumbai [in short 'the CIT(A)'] dated 03/05/2019 for the assessment year 2009-10.

2. Shri Sushil Kumar Mishra representing the Department submitted that the assessee had indulged in procuring bogus purchase bills amounting to Rs.7,03,471/- from various (five) hawala operators. During assessment proceedings, the assessee failed to prove genuineness of purchases and authenticity of the dealers. The

notices issued under section 133(6) of the Income Tax Act, 1961 (in short 'the Act') by the Assessing Officer to suspicious dealers on the addresses furnished by the assessee were returned back unserved by postal authorities with remarks 'left' or 'not known'. The assessee could neither furnish confirmation from the said dealers nor the relevant documents viz. octroi receipts, delivery challans, transport receipts, stock register, etc. to prove trail of goods. The Assessing Officer after examining the documents furnished by the assessee made addition of 25% of the total bogus purchases. In first appellate proceedings, the CIT(A) restricted the addition to 6% . The Id.Departmental Representative submitted that the Assessing Officer had made fair and reasonable disallowance of 25% of total bogus purchases by placing reliance on the decision in the case Simit P. Seth, 356 ITR 451 (Guj). The Id. Departmental Representative prayed for reversing the finding CIT(A) and upholding addition made in assessment proceeding.

3. On the other hand, Shri Manish Sheth appearing on behalf of the assessee strongly supported the impugned order and prayed for dismissing the appeal of Revenue. The Id. Authorized Representative of assessee submitted that the assessee is engaged in providing labour job work on CNC wire cut machine. During assessment proceedings the assessee produced various documents such as purchase invoices, bank statement, ledger account of the party, etc. to substantiate genuineness of purchases. However, the Assessing Officer disbelieved the same and disallowed 25% of alleged bogus purchases. In appellate proceeding the CIT(A) has restricted the addition to 6% and the same has been accepted by the assessee. During assessment year 2009-10 the assessee has declared G.P of 5%. The Id. Authorized Representative of the assessee prayed for dismissing the appeal of Revenue and upholding the order of CIT(A).

4. Both sides heard, orders of authorities below examined. Undisputedly, the assessee has failed to discharge his onus in substantiating genuineness of disputed purchases and the dealers from whom such purchases were made. At the same

time, it is observed that the Assessing Officer has accepted the sales turnover declared by the assessee. In such like transactions only the profit element embedded in the transactions can be taxed. The assessee has declared G.P of 5% on regular sales/turnover. Estimation of 25% margin on bogus purchases by the Assessing Officer is very much on the higher side. I concur with the findings of CIT(A) in restricting the addition to 6% of bogus purchases. The impugned order is upheld and appeal of the Revenue is dismissed, being devoid of merit.

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 अग्रेषित Copy 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