

आयकर अपीलीय 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. 5771/मुं/2019 (नि.व.2009-10)  
ITA NO.5771/MUM/2019 (A.Y.2009-10)

ITO-32(3)(1),  
Room No. 734, 7<sup>th</sup> Floor,  
Kautilya Bhavan, BKC,  
Bandra (E), Mumbai-400051.

..... अपीलार्थी /Appellant

बनाम Vs.

Shri Rahul M. Patel,  
1<sup>st</sup> Floor, Mehta Apartments,  
Tulsi Baug, Borivali (W),  
Mumbai-400103.

PAN: **AACPP6284H**

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Smita Verma

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 06/04/2021

घोषणा की तिथि/ Date of pronouncement : 02/07/2021

आदेश / ORDER

**PER VIKAS AWASTHY, J.M:**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-46, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 21.05.2019 for the Assessment Year (AY) 2009-10.

2. The brief facts of the case as emanating from records are: The assessee is engaged in manufacturing of kitchenware and steel products. On the basis of information received from the Sales Tax Department, Government of Maharashtra, the assessment for AY 2009-10 in the case of assessee was re-opened. As per information received, the assessee had obtained bogus purchases bills amounting to Rs. 90,750/- from three dealers, declared as hawala operators by the Sales Tax Department, Government of Maharashtra. The Assessing Officer (AO) made addition of the entire alleged bogus purchases. The assessee carried the issue in appeal before the CIT(A). The CIT(A) after considering the Gross Profit (GP) declared by the assessee, escapement of Value Added Tax (VAT) and average industry margin restricted the addition to 10.5% on alleged bogus purchases. Now, the Revenue is in appeal against the relief granted by the CIT(A).

3. Ms. Smita Verma representing the Department vehemently defended the assessment order. The Departmental Representative (DR) submitted that the assessee has failed to produce the dealers or confirmations from them. The assessee has not furnished any document such as delivery challans, lorry receipts, stock register etc. to prove trail of goods. The Id. DR prayed for restoring the addition as per the assessment order.

4. Submissions made by Id. DR heard, orders of the authorities below examined. Undisputedly, the assessee failed to discharge his onus in proving authenticity of the dealers and the purchase made from them. At the same time, it is observed that the AO has not disputed the sales turnover declared by the assessee. Without purchases, there cannot be sales, therefore, it is only

the profit element embedded in such like transactions that can be brought to tax. (Re: PCIT vs. Paramshakti Distributors Pvt. Ltd. in Income Tax Appeal No. 413 of 2017 decided on 15.07.2019). The CIT(A) after taking into consideration entire facts has restricted the addition on bogus purchases to 10.5%. I see no infirmity in the impugned order, therefore, the same is upheld and appeal of the Revenue is dismissed, sans merit.

Order pronounced in the open court on **Friday**, the **02<sup>nd</sup>** day of July, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 02/07/2021

SK, PS

**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**