

आयकर अपीलिय 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. 5772/मुं/2019 (नि.व.2010-11)
ITA NO.5772/MUM/2019 (A.Y.2010-11)

ITO-28(1)(2),
Room No. 328, 3rd Floor,
Tower No.6, Vashi Railway Station Complex,
Vashi, Navi Mumbai-400703. अपीलार्थी /Appellant

बनाम Vs.

Shri Balchandra Gopal Shirolkar
Flat No.103, Sudama CHS Ltd.
Plot No. 49, Sector-29,
Vashi, Navi Mumbai-400703.
PAN: **AACPS5913C** 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)-26, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 17.06.2019 for the Assessment Year (AY) 2011-12. The solitary issue raised by the Revenue in appeal is against restricting addition on account of bogus purchases to 12.5% by the CIT(A).

2. The assessee is engaged in manufacturing of Fire Temple structure. The assessment for AY 2010-11 in the case of assessee was re-opened on the ground that the assessee has obtained accommodation bills amounting to Rs. 5,19,478/- from suspicious dealers. The Assessing Officer (AO) made addition of the entire alleged bogus purchases. Aggrieved by the assessment order dated 25.01.2016 passed under section 143(3) read with section 147 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act '], the assessee filed appeal before the CIT(A). The CIT(A) upheld the findings of AO to the extent that the assessee has failed to discharge his onus in proving genuineness of the dealers and purchases made from them. However, the CIT(A) restricted the disallowance on bogus purchases to 12.5%.

3. Ms. Smita Verma representing the Department vehemently defended the assessment order. The Departmental Representative (DR) submitted that the assessee has failed to produce dealers or confirmations from them. The notices issued under section 133(6) of the Act to the suspicious dealers were received back unserved from the postal authorities with remarks "Left/Not Known/Address Incomplete". 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 restricted the addition on account of bogus purchases to 12.5%. 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 **02nd** day of July, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

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

SK, PS

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