

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. 5783/मुं/2019 (नि.व.2009-10)
ITA NO.5783/MUM/2019 (A.Y.2009-10)

ITO, Ward-27(2)(5), Room No. 421, 4 th Floor, Tower No.6, Vashi Railway Station Complex, Vashi, Navi Mumbai-400703.	बनाम /Vs.	Shri Pratik M. Mehta, 35-B, Sindhu Baugh, Tilak Road, Ghatkopar (East), Mumbai-400077
(अपीलार्थी /Appellant)		(प्रतिवादी /Respondent)
PAN No. AAHPM4344E		

सी.ओ.सं.40/मुं/2021 (नि.व.2009-10)
C.O. NO.40/MUM/2021 (A.Y.2009-10)

Shri Pratik M. Mehta, 35-B, Sindhu Baugh, Tilak Road, Ghatkopar (East), Mumbai-400077	बनाम /Vs.	ITO, Ward-27(2)(5), Room No. 421, 4 th Floor, Tower No.6, Vashi Railway Station Complex, Vashi, Navi Mumbai-400703.
(अपीलार्थी /Appellant)		(प्रतिवादी /Respondent)
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अपीलार्थी द्वारा/ Appellant by : Ms. Smita Verma, DR

प्रतिवादी द्वारा/Respondent by : Sh. Paras Savla, AR

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

घोषणा की तिथि/ Date of pronouncement : 01/07/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-25, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 06.06.2019 for the Assessment Year (AY) 2009-10. The assessee has filed Cross Objections (C.O) in the appeal by Revenue.

2. The brief facts of the case as emanating from records are: the assessee is engaged in manufacturing of packaging boxes from paper-sheets, carft paper, etc. In assessment proceeding under section 143(3) read with section 147 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'], the AO held that the assessee has made bogus purchases to the tune of Rs. 18,70,395/- from following parties:

Sr No.	Name of the party	Amount
1	N B Enterprises	13,10,220/-
2	J B Enterlink	4,07,420/-
3	Aman Enterprises	1,52,755/-

The aforesaid parties were named as hawala operators by the Sales Tax Department, Government of Maharashtra. The assessee was asked to prove genuineness of aforesaid dealers and purchases made from them. Since, the assessee failed to discharge his onus in proving genuineness of the dealers and the purchases made from them, the AO made addition of entire alleged bogus purchases. Aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) after examining the facts of case and the Gross Profit (GP) declared by the assessee, restricted the addition to 15% of the alleged bogus

purchases. Against the relief granted by the CIT(A), the Revenue is in appeal. The assessee has filed C.O. against the addition confirmed by the CIT(A).

3. Ms. Smita Verma representing the Department vehemently defended the assessment order and prayed for reversing the findings of CIT(A) in restricting the addition on account of bogus purchases to Rs. 2,80,559/- i.e. to the extent of 15% of total bogus purchases. The Id. DR submitted that the assessee has failed to discharge his onus in proving genuineness of the dealers and the purchases made from them. The notices issued to the dealers under section 133(6) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] remained unserved, no confirmations were filed by the assessee from the dealers and no documentary evidence was filed by the assessee to prove trail of goods procured from suspicious dealers.

4. On the other hand, Shri Paras Savla appearing on behalf of the assessee submitted that the assessee had furnished copies of invoices and bank statements. The assessee had submitted sufficient evidence to prove genuineness of the purchases, thereafter, no addition on account of bogus purchases should be made.

5. Both sides heard, orders of the authorities below examined. The assessee has failed to discharge his onus in proving genuineness of the purchases. The assessee failed to furnish copies of delivery challans, lorry receipts, stock register etc., to prove trail of goods. Payment to dealers through banking channel is not sacrosanct evidence to prove genuineness of purchases and thus, does not absolve the assessee from involvement in obtaining bogus entry from hawala dealers. The assessee has not brought on record any cogent

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documentary evidence indicating movement of goods such as lorry receipts, octry receipts, consumption details, stock register, etc. No confirmations from suspicious dealers were either placed on record. Hence, the assessee failed to discharge his onus in proving authenticity of the dealers and alleged purchases made from them.

6. It is further observed that the sales turnover and stock declared by assessee has not been doubted by the AO. Without purchases there cannot be sale/manufacturing. Hence, entire alleged bogus purchase cannot be added back. It is only the profit element embedded in such transaction 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). A perusal of the impugned order shows that the assessee has declared GP of 16.77% during the period relevant to the AY under appeal. The CIT(A) has restricted the addition on bogus purchases to 15%. I see no reason to interfere with the findings of CIT(A) in estimating additional profit margin of 15% on unproved purchases. The impugned order is upheld and appeal of the Revenue is dismissed, sans merit.

C.O.No. 40/Mum/2021 by assessee

7. The C.O. filed by assessee is time barred by 17 days. The assessee has filed an application seeking condonation of delay supported by an affidavit citing reasons for delay in filing of the C.O. After examining the affidavit, it appears that the delay in filing of the C.O. is not deliberate. The delay has been caused due to bonafide reasons stated in the affidavit. Taking into consideration, the reasons cited for delay in filing of the C.O., the delay of 17

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days is condoned and the C.O. is admitted to be heard and disposed of on merit.

8. In C.O., the assessee has assailed the order of CIT(A) in confirming addition of Rs. 2,80,559/- by estimating profit at the rate 15% on bogus purchases. While adjudicating appeal of the Revenue, detailed reasons have been given for upholding the order of CIT(A), therefore, the C.O. filed by assessee assailing the impugned order is rejected.

9. In the result, appeal of the Revenue and C.O. of the assessee are dismissed.

Order pronounced in the open court on **Thursday**, the **01st** day of July, 2021.

Sd/-
(VIKAS AWASTHY)
न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 01/07/2021

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,

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(Dy./Asstt. Registrar)
ITAT, Mumbai