

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. 6454/मुं/2019 (नि.व.2010-11)
ITA NO.6454/MUM/2019 (A.Y.2010-11)

Haresh Udaychandji Jain
1st Floor, Room No. 117,
Tiranga Building, 2nd Floor,
Kamathipura, Nagpada,
Mumbai-400008.

PAN: **AGZPJ8790K**

..... अपीलार्थी /Appellant

बनाम Vs.

ITO, Ward-20(1)(2)
6th Piramal Chambers,
Lalbaug, Parel,
Mumbai-400012.

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : None
प्रतिवादी द्वारा/Respondent by : Ms. Smita Verma

सुनवाई की तिथि/ Date of hearing : 06/05/2021
घोषणा की तिथि/ Date of pronouncement : 12/07/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-55, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 29.07.2019 for the Assessment Year (AY) 2010-11.

2. The brief facts of case as emanating from records are: The assessee is trader in steel. In assessment proceedings, the Assessing Officer (AO) observed

that the assessee has obtained bogus purchase bills amounting to Rs. 29,63,955/- from five dealers, declared as hawala operators by the Sales Tax Department, Government of Maharashtra. The AO issued notice under section 133(6) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] to the said vendors. No reply was received by the AO from said dealers, in response to the notice issued. The assessee also failed to furnish confirmations from the vendors. The assessee produced copies of ledger accounts, bank statements and invoices to prove genuineness of purchases, however, no document was furnished by the assessee in the form of lorry receipts, stock register, octry receipts, etc. to prove trail of goods. The AO made estimated addition of 12.5% on alleged bogus purchase.

Aggrieved by the assessment order dated 19.02.2016 passed under section 143(3) read with section 147 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) after considering submissions of assessee and examining the facts upheld the findings of AO and confirmed the addition made in assessment proceedings, hence, the present appeal by the assessee.

3. The assessee in appeal has assailed confirming of addition of Rs. 3,70,499/- i.e. @ 12.5% of alleged bogus purchases on the ground that:

1. The purchases are supported by Bills.
2. Payments are made by A/c Payee Cheques.
3. Sales out of purchase are accepted.
4. Supplier has paid taxes on purchases.
5. Appellant has submitted corresponding sales.
6. The books of accounts are audited.

Therefore, no addition should have been made on account of bogus purchases.

4. On the contrary, the Id. Departmental Representative (DR) supported the impugned order and prayed for dismissing the appeal of assessee.

5. Submissions made by Id. DR heard, orders of the authorities below and documents on record examined. The assessee in order to substantiate genuineness of purchases has furnished bank statements, purchase invoices, books of account, etc. It is a settled legal proposition that payment made through cheques are not sacrosanct to prove genuineness of the transaction. Hence, the assessee is not absolved from the charge of obtaining bogus purchase bills. The assessee has failed to furnish documents to prove trail of goods. Further, the assessee has not been able to substantiate authenticity of the dealers from whom unproved/bogus purchases have been made. Therefore, I find no infirmity in the impugned order so far as assessee's involvement in obtaining accommodation entries. As regards quantum of addition, I find that estimation of profit margin at 12.5% on bogus purchases by lower authorities is on higher side. Generally, the Gross Profit (GP) in trading of steel ranges between 5% to 8%. To meet the ends of justice, I restrict the addition on account of bogus purchase to 7%. Consequently, the impugned order is modified and the appeal of assessee is partly allowed.

6. In the result, appeal of assessee is partly allowed.

Order pronounced in the open court on **Monday**, the **12th** day of July, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 12/07/2021

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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai