

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. 7168/मुं/2019 (नि.व.2011-12)
ITA NO.7168/MUM/2019 (A.Y.2011-12)

Manoj J. Bokadia,
Prop. of Kalash Steel,
Room No.24, 3rd Floor,
Bansi Bhavan, 3rd Khetwadi Lane,
Mumbai-400004.

PAN: **AGIPB8853G**

..... अपीलार्थी /Appellant

बनाम Vs.

ITO-19(1)(4)

Income Tax Office,
Matru Mandir, Tardeo Road,
Mumbai-400007.

..... 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 assessee is directed against the order of Commissioner of Income Tax (Appeals)-30, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 08.08.2019 for the Assessment Year (AY) 2011-12.

2. The brief facts of the case as emanating from records are: The assessee is engaged in trading of ferrous and non-ferrous metals. The assessment for

the Assessment Year (AY) 2011-12 in the case of assessee was re-opened on the ground that the assessee has indulged in obtaining bogus purchase bills aggregating to Rs. 2,51,73,210/- from various (11) dealers, declared as hawala operators by the Sales Tax Department, Government of Maharashtra. During the course of assessment proceedings, the Assessing Officer (AO) issued notice under section 133(6) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] to the suspicious dealers from whom the assessee had allegedly obtained accommodation entries. The notices were returned back unserved by the postal authority with remark "Not Known" or "No Such Address" or "Left". No confirmations from the dealers were either produced by the assessee. Further, the assessee failed to furnish documents such as Lorry Receipts, Octroi Receipts, stock register, etc. to prove trail of goods. The AO estimated Gross Profit (GP) @ 12.5% on non-genuine purchases and made addition of Rs. 31,46,651/-.

Aggrieved by the assessment order dated 29.02.2016 passed under section 143(3) read with section 147 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) not only upheld the findings of AO with regard to assessee's involvement in obtaining bogus purchase bills but enhanced the disallowance to 100% of the alleged bogus purchases. Hence, the present appeal by the assessee.

3. Ms. Smita Verma representing the Department vehemently defended the impugned order. The Id. DR submitted that since the assessee failed to discharge his onus in proving genuineness of the dealers and purchases made from them during the period relevant to AY under appeal, the CIT(A) made 100% disallowance of the bogus purchases. The Id. DR placed reliance on the

decision of Hon'ble Supreme Court of India in the case of N.K. Proteins Ltd. v/s DCIT [84 taxmann.com 195] and prayed for dismissing appeal of the assessee.

4. Submissions made by Id. DR heard, orders of authorities below examined. Undisputedly, the assessee failed to discharge his onus in proving authenticity of the dealers and the alleged purchases made from the said dealers. At the same time, it is observed that the AO and the CIT(A) has accepted the sales turnover declared by the assessee. Without purchase, there cannot be sales, therefore, entire alleged bogus purchases cannot be disallowed. It is the profit element embedded in unproved 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*). In the light of the facts of the case and the aforesaid decision rendered by Hon'ble Jurisdictional High Court, I am of considered view that the CIT(A) has erred in making 100% disallowance of alleged bogus purchases. Generally, in trading of ferrous and non-ferrous metals, the Gross Profit ranges between 5% to 8%. Taking into consideration entirety of facts, I deem it appropriate to estimate suppressed profit margin at 7.5% on unproved purchases.

5. In the result, appeal of assessee is partly allowed in the term aforesaid.

Order pronounced in the open court on **Friday**, 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