

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 6232/मुं/2019 (नि.व. 2009-10)
ITA NO.6232/MUM/2019 (A.Y.2009-10)

M/s. Harakchand T. Sanghvi,
213, Dr.M.G.Mahim Tura Marg,
Mehta Mension No.1, 4th Floor,Room No.19,
Mumbai 400 004.

PAN: AAAHH-6219-J

..... अपीलार्थी /Appellant

बनाम Vs.

The Income Tax Officer – 19(1)(5),
Matru Mandir, Tardeo Road,
Mumbai 400 007.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Ms. Smita Verma

सुनवाई की तिथि/ Date of hearing : 03/05/2021

घोषणा की तिथि/ Date of pronouncement : 16/07/2021

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals) -29, Mumbai [in short 'the CIT(A)'] dated 24/07/2019 for the assessment year 2009-10.

2. The brief facts of the case as emanating from records are: The assessee is engaged in manufacturing of Air Conditioner condensers and cooling coils. The assessment in the case of assessee for assessment year 2009-10 was reopened on the ground that the assessee has indulged in obtaining bogus purchase bills from suspicious dealers. During the course of assessment proceedings the Assessing

Officer found that the assessee has obtained accommodation bills aggregating to Rs.38,61,834/- from the following dealers:

Name of the hawala party	Amount (in Rs.)
Big Trade Agency	18,71,960/-
Parshva & Co.	4,33,125/-
Ruchi Impex	15,56,749/-
Total	38,61,834/-

During the course of assessment proceedings, the Assessing Officer asked the assessee to prove genuineness of purchases and authenticity of aforesaid dealers. Notice under section 133(6) of the Income Tax Act,1961 (in short 'the Act') was issued to the aforesaid vendors, however, the same were received back unserved from postal authorities with remarks 'not known or left'. The assessee could neither produce the dealers, nor confirmations from them. To prove trail of goods procured from suspicious dealers the assessee failed to produce any document viz. delivery challans, transport receipts, good inward register, stock register, etc. Thus, the assessee failed to discharge his onus in proving genuineness of the dealers and the purchases made from them. The Assessing Officer after rejecting the books of assessee estimated profit margin on bogus purchases at 12.5% and made addition of Rs.4,82,729/-.

Aggrieved by the assessment order dated 21/03/2015 passed under section 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A) challenging validity of reopening, rejection of books of account and the addition made in respect of bogus purchases. The CIT(A) after examining the facts of case and submissions of assessee upheld reopening of assessment and addition made on merits and dismissed appeal of the assessee in toto. Hence, the present appeal by assessee.

3. Ms. Smita Verma representing the Department vehemently defended the impugned order prayed for dismissing the appeal of assessee. The Id.Departmental Representative submitted that the assessee has failed to discharge his onus in

proving authenticity of suspicious dealers and genuineness of purchases made from them. The Assessing Officer / CIT(A) in a fair and reasonable manner has estimated Gross Profit on bogus purchases at 12.5%. The Id.Departmental Representative prayed for upholding the impugned order.

4. Submissions made by Id.Departmental Representative heard, orders of authorities below examined. The assessee in ground No.1 & 2 of appeal has assailed reopening of assessment. Similar ground was raised before the CIT(A). The CIT(A) after examining the same as upheld validity of reopening. No contrary material is available on record, therefore, I find no reason to interfere with the findings of CIT(A) on this issue. Consequently, ground No.1 and 2 of appeal are dismissed.

5. In ground No.3 of appeal, the assessee has challenged rejection of books of account. Undisputedly, the assessee failed to discharge his onus in proving genuineness of suspicious dealers and purchases made from them. The Assessing Officer has rejected the books of assessee and thereafter estimated G.P on bogus purchases. It would be relevant to mention here that the Assessing Officer while estimating G.P on unproved purchases has neither disturbed the G.P declared by the assessee on regular purchases nor sales turnover declared by the assessee. Therefore, no prejudice is caused to the assessee in so far regular/undisputed purchases. The ground No.3 of appeal is without any merit hence, dismissed.

6. In ground No.4 of appeal, the assessee has assailed addition made on estimations in respect of bogus purchases. The assessee has declared over all G.P of 6.24%. The Assessing Officer has estimated G.P on bogus purchases at 12.5%. The CIT(A) has upheld the same. In my considered opinion estimation of G.P at 12.5% is on higher side. To meet the ends of justice suppressed profit margin on bogus purchases is restricted to 7%. The ground No.4 of appeal is partly allowed.

7. The ground No.5 and 6 are general in nature, hence, require no adjudication.
8. In the result, appeal by assessee is partly allowed in the terms aforesaid.

Order pronounced in the open Court on Friday, the 16th day of July, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 16/07/2021

Vm, Sr. PS (O/S)

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