

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी" , मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
आअसं. 8057/मुं/2019 (नि.व 2011-12)
ITA NO.8057/MUM/2019(A.Y 2011-12)

ITO-33(2)(2),
Room No.846, 8th Floor,
Kautilya Bhavan, BKC,
Mumbai 400 051,

..... अपीलार्थी /Appellant

बनाम Vs.

Kalpesh Dhirajlal Patel,
4C/401, Paras Nagar,
Shanker Lane, Khandivali (W),
Mumbai – 400 067.

PAN: **AKNPP-9059-M**

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Sanjay J. Sethi

प्रतिवादी द्वारा/Respondent by : Shri Vishwas Mehendale

सुनवाई की तिथि/ Date of hearing : 10/06/2021

घोषणा की तिथि/ Date of pronouncement : 28/07/2021

आदेश/ ORDER

This appeal by the Revenue is directed against the order Commissioner of Income Tax(Appeals)-45, Mumbai [in short 'the CIT(A)'] dated 24/10/2019 for the assessment year 2011-12.

2. Shri Sanjay J. Sethi representing the Department submitted that the assessment for assessment year 2011-12 in the case of assessee was reopened on the basis of information received from DGIT (Inv), Mumbai. As per the information received, the assessee had obtained bogus purchase bills aggregating to

Rs.15,96,010/- from six dealers, declared as hawala operators by the Sales Tax Department, Government of Maharashtra. During assessment proceedings, the assessee could neither produce suspicious dealers nor any confirmations from the said dealers were filed. No documentary evidence in the form of delivery challan, lorry receipt, octroi receipt, etc. were furnished by the assessee to show trail of goods. Since, the assessee failed to discharge his onus in proving genuineness of purchases and the dealers, the Assessing Officer disallowed 25% of bogus purchases and made addition of Rs.3,99,002/-. In First Appellate proceedings, the CIT(A) restricted the disallowance to 12.5% of bogus purchases. Now, the Revenue is in appeal against the relief granted by the CIT(A). The Id.Departmental Representative prayed for reversing the findings of CIT(A) and confirming the addition made in assessment order.

3. On the other hand, Shri Vishwas Mehendale appearing on behalf of the assessee strongly supported the impugned order and prayed for dismissing appeal by the Department. The Id.Authorized Representative of the assessee submitted that the assessee is engaged in manufacturing of PVC Compound/Granules. The disallowance made by Assessing Officer on alleged bogus purchases was very much on the higher side. The Id.Authorized Representative of the assessee contended that though the purchases were genuine, however, to settle dispute, the assessee has accepted the addition confirmed by CIT(A).

4. Both sides heard, orders of authorities below examined. Undisputedly, the assessee failed to discharge his onus in proving authenticity of suspicious dealers and genuineness of purchases made from them during the period relevant to assessment year under appeal. The Assessing Officer after accepting the sales turnover declared by assessee, disallowed 25% of alleged bogus purchases. We are of considered view that disallowance made by the Assessing Officer was on higher side. It is only the profit element embedded in such transactions that can be brought to tax. The CIT(A) has estimated suppressed profit margin on bogus

purchases at 12.5% . The same has been accepted by the assessee. We find no reason to interfere with the findings of CIT(A), hence, impugned order warrants no interference.

5. In the result, appeal by the Revenue is dismissed, sans merit.

Order pronounced in the open Court on Wednesday, the 28th day of July, 2021

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ ACCOUNTNT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 28/07/2021

Vm, Sr. PS (O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

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