

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. 6218/मुं/2019 (नि.व.2009-10)
ITA NO.6218/MUM/2019 (A.Y.2009-10)

ITO-33(1)(5),

Kautilya Bhavan, 9th Floor,
Room No. 951, BKC, Bandra (E),
Mumbai-400051

..... अपीलार्थी /Appellant

बनाम Vs.

Harshad M. Padia,
Khyati Hydraulics, 13, GopalKunj,
Sarojini Naidu, Kandivali(W),
Mumbai-400067.

PAN: **AABPP1488Q**

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Smita Verma

प्रतिवादी द्वारा/Respondent by : None

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

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

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-45, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 05.04.2019 for the Assessment Year (AY) 2009-10.

2. Ms. Smita Verma representing the Department submitted that the assessee has obtained bogus purchase bills aggregating to Rs. 18,85,322/- from

various (6) dealers, declared as hawala operators by the Sales Tax Department, Government of Maharashtra. During assessment proceedings, the assessee failed to discharge his onus in proving genuineness of the dealers and the purchases made from them. The notices issued to dealers by the Assessing Officer (AO) under section 133(6) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] were returned back unserved by postal authorities with remarks 'Left'. Only one dealer i.e. M/s Aayushi Enterprises responded to the notice, denying any transactions with the assessee. No confirmations from other dealers were filed by the assessee. No document to prove trail of goods was filed by the assessee to prove genuineness of the transactions. The AO disallowed entire purchases made from M/s Aayushi Enterprises i.e. Rs. 69,750/- and in respect of remaining unproved purchases, the AO made estimated disallowance of 20%. Thus, the AO made disallowance of Rs. 4,32,864/- on non-genuine purchases. In first appellate proceedings, the CIT(A) restricted disallowance of 12.5% of total unproved purchases. The Id. DR prayed for reversing the findings of CIT(A) and upholding the addition made by AO.

3. Submissions made by Id. DR heard, orders of authorities below examined. Undisputedly, the assessee failed to discharge his onus in proving authenticity of suspicious dealers and purchases made from them. Since, the AO accepted sales turnover declared by assessee, the AO estimated profit margin on alleged bogus purchases at 20%. The AO made entire addition on alleged bogus purchase in respect of M/s Aayushi Enterprises as the said vendor had denied any business dealings with the assessee. In first appellate proceedings, the CIT(A) upheld the findings of AO to the extent that the

assessee has indulged in obtaining bogus purchase bills, however, the CIT(A) restricted the addition to 12.5% of total unproved purchases including purchases from Aayushi Enterprises. I concur with the findings of CIT(A), therefore, the impugned order is upheld and appeal of the Revenue is dismissed, sans merit.

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

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,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai