

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. 6223/मुं/2019 (नि.व.2010-11)
ITA NO.6223/MUM/2019 (A.Y.2010-11)

ITO-31(1)(1),
603, Kautilya Bhavan, ,
BKC, Bandra (E),
Mumbai-400051

..... अपीलार्थी /Appellant

बनाम Vs.

Shri Anant S. Rajguru,
Unit No.2, Oshiwara Garden Road,
Near Ajit Glass Signal,
Jogeshwari (W), Mumbai-400102.

PAN: **AAAPR5217N**

..... 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 01.04.2019 for the Assessment Year (AY) 2010-11.

2. Ms. Smita Verma representing the Department submitted that the assessee has obtained bogus purchase bills amounting to Rs. 3,20,312/- from M/s Shree Ram Steel during the period relevant to the AY under appeal. The

assessee could neither produce the dealer nor any confirmation from the said dealer. The notice issued under section 133(6) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] remained unserved. No document was furnished by the assessee to prove trail of goods. The Assessing Officer (AO) after examining the facts of case estimated the Gross Profit (GP) at the rate of 29% on bogus purchases of Rs. 1,60,433/- and made addition of Rs. 46,525/- and added back entire unproved purchases to the tune of Rs. 1,59,879/-. The assessee carried the issue in appeal before the CIT(A). The CIT(A) restricted the addition to Rs. 40,040/- by estimating profit margin of 12.5% on total bogus purchases. The Department is in appeal against the addition restricted by the CIT(A). The Id. Departmental Representative (DR) prayed for restoring the findings of AO.

3. Submissions made by Id. DR heard, orders of authorities below examined. The assessee is engaged in manufacturing of gears, gear boxes and machinery spares. Undisputedly, the assessee failed to discharge his onus in proving genuineness of purchases made from M/s Shree Ram Steel. The AO made addition by estimating profit margin of 29% on part of unproved purchases and for the remaining unproved purchases the AO made 100% addition. However, no reason whatsoever was given by the AO in bifurcating unproved purchases for making disallowance at 29% and 100%. In first appellate proceedings, the CIT(A) has upheld the findings of AO to the extent of assessee's involvement in obtaining bogus purchase bills, however, the CIT(A) restricted the addition to 12.5% of total unproved purchases. I am of considered view that disallowance made by the AO in respect of bogus purchases is very much on the higher side. Further, after having accepted sales

turnover, entire unproved purchases cannot be added. It is the profit element embedded in such transactions that can be brought to tax. I find no infirmity in the impugned order, hence, it warrants no interference. The appeal of Revenue is dismissed, being devoid of any 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