

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी" , मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
आअसं. 5789/मुं/2019 (नि.व.2010-11)
ITA NO.5789/MUM/2019 (A.Y.2010-10)

ITO-32(1)(4),
Room No. 706, 2nd Floor,
Kautilya Bhavan,
Bandra Kurla Complex,
Bandra(E), Mumbai-400051.

..... अपीलार्थी /Appellant

बनाम Vs.

Shri Dalaram P. Patel,
46/A, 2nd Floor, Gajawala Apartments,
S.V. Road, Borivali (W),
Mumbai-400092.

PAN: **AIRPP1042L**

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Sanjay J. Sethi

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 09/06/2021

घोषणा की तिथि/ Date of pronouncement : 30/07/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-46, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 04.06.2019 for the Assessment Year 2010-11.

2. Sh. Sanjay J. Sethi representing the Department submitted that during the course of assessment proceedings, the AO found that assessee has obtained bogus purchase bills amounting to Rs. 62,39,443/- from five dealers, declared as hawala operators by the Sales Tax Department, Government of Maharashtra. The AO issued notice to the said dealers under section 133(6) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act']. The said notices were received back unserved from the postal authorities with remarks "Not known/Left". During assessment proceedings, the assessee could neither file confirmations nor produce the dealers, no documentary evidences viz. Octroi receipts, stock register, Lorry receipts, etc. was furnished by the assessee to prove trail of goods. The AO estimated GP @ 25% and made addition of Rs. 15,59,861/-. Against the assessment order, the assessee filed appeal before the CIT(A), the CIT(A) restricted the disallowance on bogus purchases to 12.5%. The Id. DR vehemently defending the assessment order and prayed for restoring the GP estimated by the AO.

3. Submissions made by Id. DR heard, orders of the authorities below examined. The assessee is engaged in trading of building material etc. Undisputedly, the assessee failed to discharge his onus in proving authenticity of the five dealers as mentioned in the assessment order and the purchases made from said dealers. Since, the AO accepted sales turnover declared by the assessee, the AO estimated GP on alleged purchases at 25%. In First Appellate proceedings, the CIT(A) upheld the findings of AO to the extent of assessee's involvement in obtaining bogus purchase bills. The CIT(A) following the order of Tribunal in assessee's own case in ITA No. 5117/Mum/2016 for AY 2011-12 decided on 09.08.2017 restricted the estimated GP on alleged bogus purchases

to 12.5%. We are of considered view that estimation of suppressed profit margin by the AO was on higher side. We find no infirmity in the impugned order, hence, the same is upheld and appeal of the Revenue is dismissed, sans merit.

Order pronounced in the open court on **Friday**, the **30th** day of July, 2021.

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Dated: 30/07/2021

SK, PS

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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai