

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. 7803/मुं/2019 (नि.व.2009-10)
ITA NO.7803/MUM/2019 (A.Y.2009-10)

ITO, Ward-3(2), Room No. 4, 6 th Floor, B-Wing, Wagle Industrial Estate, Thane (W)-400604.	बनाम /Vs.	M/s Bharat Grahak Sahakari Sanstha Maryadit, Shivbhakti Narayan bhavan, Karve Road, Naupada, Thane-400602.
(अपीलार्थी /Appellant)		(प्रतिवादी /Respondent)
PAN No. AAABB0145R		

अपीलार्थी द्वारा/ Appellant by : Sh. Sanjay J. Sethi
प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 03/06/2021
घोषणा की तिथि/ Date of pronouncement : 10/08/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-1, Thane [hereinafter referred to as 'the CIT(A)'] dated 07.10.2019 for the Assessment Years (AY) 2009-10.

2. Shri Sanjay J. Sethi representing the Department submitted that the assessee is engaged in trading of stationery items. During the period relevant to AY under appeal, the assessee had obtained bogus purchase bills amounting to Rs. 9,07,814/- from M/s V-3 Enterprises. To verify genuineness of the transactions, the Assessing Officer (AO) issued notice under section 133(6) of

the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] to the aforesaid dealer. The notice was received back unserved from postal authorities. During assessment proceedings, the assessee could neither produce the dealer nor could file confirmation from the said dealer. No evidence in support of transportation of the goods viz. lorry receipts, delivery challen, inward register, etc. was furnished by the assessee. Thus, the assessee could neither prove genuineness of the aforesaid dealer nor purchases made from the said dealer. The AO disallowed entire bogus purchases. In First Appellate proceedings, the CIT(A) restricted the disallowance on bogus purchases to 12.5%.

Now, the Revenue is in appeal against the relief granted by the CIT(A) to the assessee. The Id. Departmental Representative (DR) vehemently supported the assessment order and further placed reliance on the decision of Hon'ble Supreme Court in the case of N.K. Proteins Ltd. v/s DCIT [84 taxmann.com 195] to support 100% disallowance of bogus purchases.

3. Submissions made by Id. DR heard, orders of authorities below examined. Undisputedly, the assessee failed to discharge his onus in proving genuineness of the dealer and purchases made from the said dealer. At the same time, it is observed that the AO has not disturbed the sales turnover declared by the assessee. The CIT(A) has upheld the findings of AO to the extent of assessee's involvement in obtaining bogus purchase bills. The CIT(A) has estimated suppressed profit margin in bogus purchases to 12.5%. In such like suspicious transactions, entire purchases cannot be disallowed, if the AO accepted the sales turnover declared by the assessee. It is only the profit element embedded in such transactions that can be brought to tax **[Re: PCIT vs.**

**Paramshakti Distributors Pvt. Ltd. in Income Tax Appeal No. 413 of 2017
decided on 15.07.2019]**

4. I find that 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 **Tuesday**, the **10th** day of August, 2021.

Sd/-
(VIKAS AWASTHY)
न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 10/08/2021

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