

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. 5901/मुं/2019 (नि.व.2010-11)
ITA NO.5901/MUM/2019 (A.Y.2010-11)

ITO, 20(2)(5),
Room No. 208, 2nd Floor,
Piramal Chambers,
Lalbaug, Mumbai-400012.

..... अपीलार्थी /Appellant

बनाम Vs.

Shri. Prakash Chandulla Vora,
Prop. Prakash Steel Enterprises
7, Kirti Kunj, K.A. Subramanian Road,
King Circle, Mumbai-400019

PAN: **AAAPV5344A**

..... प्रतिवादी/Respondent

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

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 16/06/2021

घोषणा की तिथि/ Date of pronouncement : 24/08/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-55, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 24.06.2019 for the Assessment Year (AY) 2010-11.

2. The brief facts of the case as emanating from records are: The assessee is engaged in trading of Iron & Steel. In the course of re-assessment proceedings, the Assessing Officer (AO) held that the assessee has obtained

bogus purchase bills amounting to Rs. 6,44,358/- during the relevant period from following dealers, declared as hawala operators by the Sales Tax Department, Government of Maharashtra.

1. Deepali Enterprises Rs. 1,69,026/-
2. Rekha Trading Co. Rs. 4,75,332/-

Total Rs. 6,44,358/-

Since, the assessee failed to discharge his onus in proving genuineness of the aforesaid dealers and purchases made from them, the AO estimated suppressed profit margin on bogus purchase to 12.5% and made addition of Rs. 80,545/-. Against the assessment order dated 24.02.2016 passed under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), the assessee filed appeal before the CIT(A). The CIT(A) granted part relief to the assessee by reducing suppressed profit margin to 8% of the alleged bogus purchases. Against the relief granted by the CIT(A), the Revenue is in appeal before the Tribunal.

3. Sh. Sanjay J. Sethi representing the Department submitted that the CIT(A) has erred in granting relief to the assessee by reducing estimated GP rate from 12.5% to 8% on bogus purchases. The Id. DR submitted that the assessee could neither produce the parties from whom alleged purchases were made, nor any documentary evidence was filed by the assessee to show that the goods were actually transported. Thus, the assessee failed to discharge his onus in proving authenticity of the dealers and the purchases made from them during the period relevant to AY under appeal. The Id. DR prayed for reversing the findings of CIT(A) and restoring the addition made by AO.

4. Submissions made by Id. DR heard, orders of the authorities below examined. The only issue raised in appeal by the Revenue is the relief of 4.5% granted by the CIT(A) in respect of alleged bogus purchases by the assessee. A perusal of the impugned order shows that during First Appellate proceedings, the assessee made primary submissions to delete the entire addition, without prejudice to the first prayer the assessee in alternate prayed for restricting the addition on bogus purchases to 6% i.e. difference between G.P estimated by AO and the G.P offered by the assessee. As against 6% the CIT(A) made addition of 8%.

5. Taking into consideration entirety of facts and the nature of assessee's business, I am of considered view that addition @ 12.5% on alleged bogus purchases is on higher side. I find no reason to interfere with the findings of CIT(A) in restricting the addition to 8% on alleged bogus purchases. The impugned order is upheld and the appeal of Revenue is dismissed, sans merit.

Order pronounced in the open court on **Tuesday**, the **24th** day of August, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई / Mumbai, दिनांक / Dated: 24/08/2021

SK, PS

प्रतिलिपि अग्रेषित Copy 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