

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. 116/मुं/2020 (नि.व.2009-10)
ITA NO.116/MUM/2020 (A.Y.2009-10)

ITO, 22(1)(6),
106, 1st Floor,
Piramal Chambers,
Parel, Mumbai-400012.

..... अपीलार्थी /Appellant

बनाम Vs.

Ajay Gajanan Raut,
100/04, Mehar Lodge Wadi,
K.K. Marg, Jacob Circle,
Mumbai-400011

PAN: **AAHPR5405M**

..... प्रतिवादी /Respondent

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

प्रतिवादी द्वारा/Respondent by : Sh. Nirav Shah

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

घोषणा की तिथि/ Date of pronouncement : 26/08/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-33, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 15.10.2019 for the Assessment Year (AY) 2009-10.

2. The brief facts of the case as emanating from records are: The assessee is engaged in the business of trading. The assessment for AY 2009-10 in the

case of assessee was re-opened on the basis of information received from DGIT(Investigations), Mumbai. As per the information, assessee had obtained accommodation entries amounting to Rs. 40,73,175/- from hawala operators. During the course of assessment proceedings, the assessee failed to furnish documentary evidence to prove genuineness of the dealers and the purchases made from them. Consequently, the Assessing Officer (AO) made addition on entire alleged bogus purchases.

Aggrieved by the assessment order dated 20.03.2015 passed under section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The assessee filed appeal before the CIT(A) assailing re-opening of assessment, as well as, addition on account of bogus purchases. The CIT(A) dismissed the ground raised by the assessee challenging validity of re-opening. On merits of the addition, the CIT(A) upheld the findings of AO to the extent of assessee's involvement in obtaining bogus purchase bills, however, the CIT(A) allowed part relief to the assessee by restricting disallowance on bogus purchases to 25%. The Revenue is in appeal against the relief granted by the CIT(A).

3. Sh. Sanjay J. Sethi representing the Department submitted that the assessee has indulged in procuring bogus purchase bills from declared hawala operator. During assessment proceedings, the assessee could neither produce the dealers nor any confirmations from the said dealers were filed. No document in the form of Lorry receipt, Ocry receipt, stock register, etc. was produced by the assessee to prove trail of goods. The Id. Departmental Representative (DR) vehemently supported the findings of AO and prayed for upholding the same. In support of his submissions to make 100% disallowance

of bogus purchases, the Id. DR relied on the decision rendered in the case of N.K. Proteins Ltd. v/s DCIT [84 taxmann.com 195].

4. Submissions made by Id. DR heard, orders of the authorities below examined. Undisputedly, the assessee failed to discharge his onus in proving genuineness of the dealers and the purchases made from them. At the same time, it is observed that the sales turnover declared by the assessee has been accepted by the AO. Without purchases, there cannot be sales, hence, entire alleged bogus purchases cannot be disallowed. It is 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*). Hence, 100% disallowance made by the AO is unsustainable. The CIT(A) after considering the entire facts has restricted the disallowance to 25% of alleged bogus purchases. I see no reason to interfere with the impugned order, ergo, the impugned order is upheld and appeal of the Revenue is dismissed.

Order pronounced in the open court on **Thursday**, the **26th** day of August, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated:26/08/2021

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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai