

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी" , मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 6061/मुं/2019 (नि.व.2011-12)
ITA NO.6061/MUM/2019 (A.Y.2011-12)

Shri Rajnikant Laxmichand Shah
A/303, 3rd Floor, Shroff Tower,
Sodawala Lane, Borivali (W),
Mumbai-400092.

PAN: **AAJPS6931M**

..... अपीलार्थी /Appellant

बनाम Vs.

ITO-32(3)(1)

Kautilya Bhawan, BKC,

Bandra East, Mumbai-400051.

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Sh. Sanjay J. Sethi

सुनवाई की तिथि/ Date of hearing : 24/06/2021

घोषणा की तिथि/ Date of pronouncement : 17/09/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-44, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 23/07/2019 for the Assessment Year (AY) 2011-12.

2. The solitary issue raised by the assessee in appeal is against confirming disallowance of Rs. 7,72,413/- by estimating suppressed profit margin @ 12.5% on alleged bogus purchases.

3. The assessee is engaged in supply of building material. The assessment for AY 2011-12 in the case of assessee was re-opened on the ground that the assessee has obtained accommodation entries amounting to Rs. 61,79,304/- from M/s R.R. Traders during the period relevant to AY 2011-12. During assessment proceedings, the assessee failed to prove genuineness of the aforementioned dealer and the purchases made from the said dealer. The notice issued under section 133(6) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] by the Assessing Officer (AO) to the aforesaid dealer was received back unserved from postal authorities. The assessee could neither produce the dealer nor any document viz. inward register, stock register, transport receipts, etc. to substantiate actual/physical delivery of the goods. Since, the AO accepted the sales turnover declared by the assessee, he held the purchases from R.R. Traders as bogus and made estimated disallowance of 12.5%.

Aggrieved by the addition made in assessment order dated 24.11.2016, the assessee filed appeal before the CIT(A). The CIT(A) rejected the contentions of assessee and upheld estimated addition made by the AO.

4. Sh. Sanjay J. Sethi representing the Department vehemently defended the assessment order and the impugned order. The Id. Departmental Representative (DR) submitted that the assessee failed to produce the dealer from whom bogus purchases were made by the assessee. Non confirmations

were either furnished by the assessee from the said dealer. The AO made a reasonable estimate of suppressed profit margin at 12.5%. The CIT(A) has upheld the same by passing a reasoned order. The Id. DR prayed for upholding the impugned order and dismissing the appeal of assessee.

5. 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 dealer and purchases made from the said dealer. At the same time, it is observed that the turnover declared by the assessee has not been disputed by the AO. The AO has primarily disbelieved assessee's contention for the reason that the assessee has failed to produce the party and documents to substantiate transportation of the goods allegedly purchased from suspicious dealer. The AO has estimated suppressed margin on unproved purchases at 12.5%. The assessee has declared Gross Profit ratio of 6.74% during the relevant period. Taking into consideration entirety of facts, I deem it appropriate to restrict the disallowance on unproved purchases to 7%. The impugned order is modified accordingly and the appeal of assessee is partly allowed in the terms aforesaid.

Order pronounced in the open court on **Friday**, the **17th** day of September, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 17/09/2021

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