

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. 7486 & 7487/मुं/2019 (नि.व. 2009-10 & 2010-11)
ITA NO.7486& 7487/MUM/2019(A.Y 2009-10 & 2010-11)

ITO-28(1)(1),
Room No.329, 3rd Floor,
Tower No.6, Vashi Railway Station Complex,
Vashi, Navi Mumbai – 400 703

..... अपीलार्थी /Appellant

बनाम Vs.

Shri Amarnath Banamali Ghosh,
A-101, Ajanta Express,
Sector -19, Airoli,
Navi Mumbai - 400708
PAN: AEJPG-0872-R
प्रतिवादी/Respondent

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अपीलार्थी द्वारा/ Appellant by : Shri Sanjay J. Sethi

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 22/07/2021

घोषणा की तिथि/ Date of pronouncement : 04/10/2021

आदेश/ ORDER

These two appeals by the Revenue are against the order of Commissioner of Income Tax (Appeals)-26, Mumbai [in short 'the CIT(A)'] for assessment year 2009-10 and 2010-11, respectively. Both the impugned order are of even date i.e. 16/09/2019.

2. Since, the facts and grounds of appeal in both these appeals are identical, these appeals are taken up together for adjudication and are decided by this common order.

ITA NO.7486/Mum/2019, A.Y. 2009-10:

3. Shri Sanjay J. Sethi representing the Department submitted that the assessee during the period relevant to the assessment year 2009-10 had obtained bogus purchase bills from Revathi Steel Traders for Rs.9,45,204/- and Lakshmi Trading Company Rs.16,84,047/-. During assessment proceedings the assessee failed to discharge its onus in proving genuineness of the aforesaid dealers and purchases made from them. The Assessing Officer in order to verify genuineness of the transactions issued notice under section 133(6) of the Income Tax Act,1961 (in short 'the Act') to the vendors, however, the same were returned back unserved by the Postal Authorities. The Assessing Officer in a very reasoned and fair manner estimated G.P @ 32.71% on non-genuine purchases and made addition of Rs.8,60,028/-. The assessee carried the issue in appeal before the CIT(A). The CIT(A) granted relief to the assessee by restricting G.P on bogus purchases to 12.5%. Against relief granted, the Revenue is in appeal before the Tribunal. The Id.Departmental Representative submitted that the CIT(A) has failed to appreciate the fact that the assessee has neither produced the dealers nor any confirmation was filed from the said dealers. No documents were placed on record by the assessee to prove trail of goods. Hence, purchases made from hawala operators remained unproved.

4. Submissions made by Id.Departmental Representative heard, orders of authorities below examined. Undisputedly, the assessee failed to discharge his

onus in proving authenticity of the dealers and the purchases made from them. At the same time it is observed that the Assessing Officer has not disputed the sales turnover declared by the assessee. It is only suppressed profit margin embedded in such like transactions that can be brought to tax. The estimation of G.P @32.71% by the Assessing Officer is very much on the higher side. The CIT(A) has granted part relief by restricting suppressed profit margin on unproved purchases to 12.5%. I find the order of CIT(A) fair and reasonable, hence, warrants no interference. In the result, appeal by the Revenue is dismissed being devoid of any merit.

ITA No.7487/Mum/2019, A.Y. 2010-11:

5. The Id.Departmental Representative submitted that the facts in assessment year 2010-11 are similar to the facts in assessment year 2009-10 except that the Assessing Officer in assessment proceedings has estimated G.P on bogus purchases at 25%. The parties from whom the assessee had obtained bogus bills are the same in both the assessment years. No documentary evidence were furnished by the assessee to prove trail of goods. The assessee could neither produce the dealers nor any confirmations from the said dealers were filed.

6. Since, facts involved in the present appeal are identical to the facts in assessment year 2009-10, except for the amount involved and the estimation of G.P on bogus purchases by the Assessing Officer. The CIT(A) in impugned order has restricted disallowance on bogus purchases to 12.5%. For parity of reasons given while adjudicating the appeal of Revenue for assessment year 2009-10, the present appeal by the Revenue is dismissed.

7. To sum up, both appeals by the Revenue are dismissed.

Order pronounced in the open Court on Monday the 04th day of October, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 04/10/2021

Vm, Sr. PS (O/S)

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