

Pआयकर 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. 6763/मुं/2019 (नि.व 2010-11)
ITA NO.6763/MUM/2019(A.Y 2010-11)

Income Tax Officer,
Ward 3(4), Thane,
2nd Floor, Rani Mansion,
Murbad Road, Kalyan,
Dist. Thane 421 301.

..... अपीलार्थी /Appellant

बनाम Vs.

Shri Sanjay Bhogilal Shah,
Prop. Of M/s. Yash Raj Steel,
C-312, Ganesh Darshan,
Veer Savarkar Road, Nehru Road,
Dombivli(E)
PAN:AVZPS-2981-G

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Sanjay J. Sethi

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 19/07/2021

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

आदेश/ ORDER

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals) -1, Thane [in short 'the CIT(A)'] dated 19/08/2019 for the assessment year 2010-11.

2. The brief facts of the case as emanating from records are: The assessee is engaged in trading of ferrous and non-ferrous metals. The assessment for assessment year 2010-11 in the case of assessee was reopened on the basis of

information received from DGIT(Investigation), Pune. As per information received, the assessee had obtained bogus purchase bills aggregating to Rs.3,18,276/- from Shradhha Trading Co.(Rs.1,63,302/-) and Sun Enterprises (Rs.1,55,974/-). Both the aforesaid parties were declared as hawala operators by the Sales Tax Department, Government of Maharashtra. During assessment proceedings the assessee failed to discharge his onus to prove genuineness of aforesaid dealers and purchases made from them. Thus, the Assessing Officer made addition of the entire bogus purchases.

Against the assessment order dated 13/02/2015 passed under section 143(3) r.w.s. 147 of Income Tax Act, 1961 (in short 'the Act'), the assessee filed appeal before the CIT(A). The CIT(A) restricted the disallowance of bogus purchases to Rs.39,785/- by estimating suppressed profit margin on bogus purchases at 12.5%. Now, the Revenue is in appeal against the relief granted by the CIT(A).

3. Shri Sanjay J. Sethi representing the Department vehemently defended the assessment order and prayed for reversing the findings of CIT(A). In support of his submissions the Id. Departmental Representative placed reliance on the decision of N.K. Proteins Ltd. vs. DCIT reported as 250 Taxman 22(SC).

4. Submissions made by Id. Departmental Representative heard, orders of authorities below examined. Undisputedly, the assessee failed to discharge his onus in proving genuineness of the dealers and the purchases made from the said dealers. At the same time it is observed that the Assessing Officer has accepted the sales turnover declared by the assessee. Without purchases there cannot be sales. It is only the profit margin embedded in such like transactions that can be brought to tax. [*RE: PCIT vs. Paramshakhti*

Distributors Pvt. Ltd. in Income Tax Appeal No.413 of 2017 decided on 15/07/2019 by Hon'ble Bombay High Court]. In the facts of the case, the Assessing Officer has erred in making disallowance of entire bogus purchases. The CIT(A) has estimated suppressed profit margin on alleged bogus purchases @12.5% as against G.P of 5.47% declared by the assessee. I find no reason to interfere with the finding of CIT(A), hence, the impugned order is up held and appeal of the Revenue is dismissed being devoid of any merit.

5. In the result, appeal by the Revenue is 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 अग्रहितCopy 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