

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एस एम सी", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 6205/मुं/2019 (नि.व.2010-11)  
ITA NO.6205/MUM/2019 (A.Y.2010-11)

ITO-33(2)(4),

Room No. 850 8<sup>th</sup> Floor,

Kautilya Bhavan, B.K.C,

Mumbai-400020.

..... अपीलार्थी /Appellant

बनाम Vs.

Nilesh D. Gandhi,

1001, 10<sup>th</sup> Floor,

Rustomji Adarsh Residency,

Off. Marve Road, Adarsh Complex,

Malad (W), Mumbai-400064.

PAN: **AERPG0404K**

..... प्रतिवादी /Respondent

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

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 30/06/2021

घोषणा की तिथि/ Date of pronouncement : 20/09/2021

आदेश/ ORDER

**PER VIKAS AWASTHY, J.M:**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-45, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 06.05.2019 for the Assessment Years (AY) 2010-11.

2. The brief facts of the case as emanating from records are: The assessee is engaged in manufacturing of household products and is trader in

promotional gift items. The assessment for Assessment Year (AY) 2010-11 in the case of assessee was re-opened on the basis of information received from the Sales Tax Department, Government of Maharashtra. As per the information received, the assessee had obtained bogus purchase bills from three dealers declared as hawala operators as under:

1. M/s Shah Industries	Rs. 1,45,600/-
2. Riddhi Siddhi Corporation	Rs. 12,45,400/-
3. H.R. Sales Pvt. Ltd.	<u>Rs. 13,63,554/-</u>
<b><u>Total Rs. 27,54,554</u></b>	

3. During assessment proceedings, the Assessing Officer (AO) issued notice under section 133(6) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') to the aforesaid parties. The said notices were returned back unserved by the postal authorities with remarks "Not Known/Left". The assessee vide letter dated 28.09.2015 pointed to the AO that the assessee is having some dispute with M/s Shah Industries, therefore, the goods purchased from said vendor are still lying in the godown of the assessee, the goods are neither returned nor any payment in respect of the goods purchased from the said vendor has been made. The AO added back entire purchases made by assessee from M/s Shah Industries and in respect of purchases from other two dealers, the AO disallowed 12.5% of such purchases.

Aggrieved by the assessment order dated 12.02.2016, the assessee filed appeal before the CIT(A). The CIT(A) after considering submissions of the assessee and documents on record restricted disallowance on entire unproved

purchases to 5%. Now, the Revenue is in appeal against the relief allowed by the CIT(A).

4. Sh. Sanjay J. Sethi representing the Department vehemently supported the assessment order and prayed for reversing the findings of CIT(A). The Id. DR submitted that the AO has disallowed 12.5% of the bogus purchases from two dealers and in respect of the 3<sup>rd</sup> dealer, the AO has added back entire purchases, as the assessee has himself admitted before the AO that no payment has been made to the said dealer.

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 dealers and the purchases made from them. The AO made disallowance of 12.5% of unproved purchases from two parties, however, in respect of the 3<sup>rd</sup> vendor, entire amount has been disallowed. In my considered view, the estimation of suppressed profit margin on unproved purchases by the AO is on higher side. The CIT(A) after considering the facts of the case in fair and justified manner has restricted the disallowance to 5%. I find no infirmity in the view taken by the CIT(A), accordingly, the impugned order is upheld and the appeal by Revenue is dismissed, sans merit.

Order pronounced in the open court on **Monday**, the **20<sup>th</sup>** day of September, 2021.

Sd/-  
(VIKAS AWASTHY)  
न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 20/09/2021  
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**