

आयकर अपीलीय 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. 494/मुं/2020 (नि.व.2009-10)
ITA NO.494/MUM/2020 (A.Y.2009-10)

ITO-27(1)(4),
Room No. 409, 4th Floor,
Tower No.6, Vashi Railway Station Complex,
Vashi, Navi Mumbai-400703.

..... अपीलार्थी /Appellant

बनाम Vs.

Dilip G. Kachhara,
Bhairav Enterprises, 1, Kanta Smruti,
Near Hotel Airways, LBS Marg,
Ghatkopar (W), Mumbai-400086.

PAN: **AABPK2046H**

..... प्रतिवादी /Respondent

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

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 01/07/2021

घोषणा की तिथि/ Date of pronouncement : 24/09/2021

आदेश / ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-24, Mumbai [hereinafter referred to as 'the CIT(A)'] ' dated 23.10.2019 for the Assessment Year (AY) 2009-10.

2. The brief facts of the case as emanating from records are: The assessee is engaged in trading of building material. On the basis of information received

from Investigation wing of the Department, the assessment for AY 2009-10 in the case of assessee was re-opened. As per the information received, the assessee had obtained accommodation entries amounting to Rs. 2,26,019/- from M/s Mahadeshpura Enterprises, a hawala operator, declared by the Sales Tax Department, Government of Maharashtra. The Assessing Officer (AO) had issued notice under section 148 and thereafter notice under section 142(1) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] to the assessee. The assessee did not respond to the said notices, hence, the AO completed the assessment under section 144 of the Act. During assessment proceeding, the assessee failed to discharge its onus in proving genuineness of the dealer and the purchases made from the said dealer. The AO estimated GP @ 25% on bogus purchases and made addition of Rs. 80,700/-.

Against the assessment order dated 19.03.2015 passed under section 143(3) read with section 147 of the Act. The assessee filed appeal before the CIT(A). The CIT(A) after examining the facts granted part relief to the assessee by estimating GP @ 10% on bogus purchases. Now, the Revenue is in appeal against the order of CIT(A).

3. Sh. Sanjay J. Sethi representing the Department vehemently supported the assessment order and prayed for reversing the findings of First Appellate Authority. The Id. Departmental Representative (DR) submitted that the CIT(A) has failed to appreciate the fact that the assessee has failed to substantiate genuineness of the dealers and the purchases made from the said dealer. The AO in a fair and reasonable manner has estimated suppressed profit margin on bogus purchases at the rate of 25%. The CIT(A) has reduced it to 10%.

4. Submissions made by Id. DR heard, orders of the authorities below examined. Undisputedly, the assessee during assessment proceedings failed to discharge its onus in proving genuineness of the dealer and the purchases made from the said dealer. The AO, disallowed 25% of the unproved purchases. In First Appellate Proceedings, the CIT(A) restricted the disallowance to 10%. In my considered view, estimation of suppressed profit margin on bogus purchases by the AO was on higher side. I find no infirmity in the order of CIT(A) in estimating suppressed profit margin to 10%. Accordingly, the impugned order is upheld and appeal by the Revenue is dismissed, sans merit.

Order pronounced in the open court on **Friday**, the **24th** day of September, 2021.

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

मुंबई/Mumbai, दिनांक/Dated: 24/09/2021

SK, PS

प्रतिलिपि अग्रेषित **Copy 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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai