

आयकर अपीलीय अधिकरण
मुंबई पीठ " एस एम सी "
श्री प्रमोद कुमार, उपाध्यक्ष एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " SMC", MUMBAI
BEFORE SHRI PRAMOD KUMAR, VICE-PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 1232/मुं/2020 (नि. व.2011-12)
ITA NO.1232/MUM/2020(A.Y. 2011-12)

Income Tax Officer – 32(2)(1),
Room NO.715, 7th Floor, Kautilya Bhavan,
C-41-43, G Block, BKC,
Bandra (E), Mumbai 400 051

..... अपीलार्थी /Appellant

बनाम Vs.

Smt. Jasmin R. Desai,
602, Shashi Apartment Ramraj P
Devidas Lane, Borivali (West)
Mumbai 400 103

PAN: AAAPD-4848-B

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Ms. Smita Verma and Shri T. Sankar

सुनवाई की तिथि/ Date of hearing : 14/01/2022

घोषणा की तिथि/ Date of pronouncement : 08/04/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals) -46, Mumbai [in short 'the CIT(A)] dated 07/11/2019 for the assessment year 2011-12.

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 the Sales Tax Department, Government of Maharashtra and DGIT(Inv), Mumbai the assessment for assessment year 2011-12 in the case of assessee was reopened. As per the information received the assessee had obtained bogus purchase bills amounting to Rs.49,11,718/- from various parties declared as hawala operators. During the course of assessment proceedings the Assessing Officer issued notice under section. 133(6) of the Income Tax act, 1961 (in short ' the Act') to the hawala parties from whom the assessee had allegedly made purchases. The notices were received back from Postal Authorities unserved with remarks "Unclaimed". The assessee also failed to furnish any documentary evidences to substantiate genuineness of the purchases from the alleged hawala operators. Since, the sales turnover declared by assessee was accepted by the Assessing Officer, the Assessing Officer made addition of suppressed profit margin on unproved purchases by estimating G.P @ 20%. The Assessing Officer while making addition reduced the G.P 8.46% declared by the assessee. The Assessing Officer made further addition @ 5% of unproved purchases in respect of escapement of VAT liability. Consequently, the Assessing Officer made addition of Rs.7,73,713/- i.e. in respect of suppressed profit margin Rs.5,39,821/- and escapement of VAT Rs.2,33,892/-. Aggrieved by the assessment order dated 01/01/2016 passed u/s. 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) after considering the submissions of the assessee and various case laws upheld the findings of the Assessing Officer to the extent that the assessee has indulged in obtaining bogus purchase bills from suspicious dealers. The CIT(A) gave partial relief by restricting the addition in respect of suppressed profits on unverifiable purchase to 12.5%. Against the relief granted by the CIT(A), the Revenue is in appeal before the Tribunal.

3. Shri T. Sankar representing the Department vehemently defended the assessment order and prayed for reversing the findings of CIT(A). The Id.Departmental Representative in support of his contentions placed reliance on the decision of Hon'ble Supreme Court of India in the case of N.K. Proteins Vs. DCIT in SLP No.(C) 769 of 2017 decided on 16/01/2017.

4. Submissions made by Id.Departmental Representative heard, orders of authorities below examined. Undisputedly, the assessee failed to discharge her onus in proving genuineness of purchases from alleged hawala operators. The Hon'ble Jurisdictional High Court in the case of PCIT vs. Paramshakhti Distributors Pvt. Ltd. in Income Tax Appeal No.413 of 2017 decided on 15/07/2019 has held that it is only suppressed profit element in such like transaction that can be brought to tax. The assessee has declared Gross Profit of 8.46%. As against the GP declared by the assessee, the Assessing Officer estimated G.P of 20% on bogus purchases. The estimation of G.P by Assessing Officer in our considered view is on higher side. The CIT(A) has restricted the addition to 12.5% on bogus purchases. The CIT(A) has made a reasonable estimate of suppressed profits, hence, we concur with the findings of the CIT(A). We find no merit in the appeal by the Revenue, the same is dismissed.

Order pronounced in the open court on Friday the 08th day of April, 2022.

Sd/-

(PRAMOD KUMAR)

उपाध्यक्ष/VICE PRESIDENT

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 08/04/2022
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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai