

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी"
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUR RAHMAN , ACCOUNTANT MEMBER
आअसं.2138/मुं/2021 (नि.व. 2011-12)
ITA NO.2138/MUM/2021(A.Y.2011-12)

Shailesh Navinchandra Shah,
6/321 Ravikiran, 1st Floor,
Devdhar Road, Matunga,
Mumbai 400 019

PAN: AAYPS-6030-Q

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer 20(3)(3),
Room NO.614, 6th Floor,
Piramal Chamber, Parel,
Mumbai 400 012.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Shri Anil Gupta

सुनवाई की तिथि/ Date of hearing : 17/05/2022

घोषणा की तिथि/ Date of pronouncement : 05/08/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Center, Delhi [in short 'the CIT(A)] dated 29/10/2021 for the Assessment Year 2011-12.

2. The solitary issue assailed by the assessee in appeal is confirmation of disallowance to the extent of 25% of the alleged bogus purchases.

3. The assessee is a senior citizen and has filed the written submissions with a prayer to decide the appeal on the basis of the same.

4. We have heard the submissions made by Id.Departmental Representative and have examined the orders of authorities below. We have also considered the written submissions filed by the assessee and various decisions on which reliance has been placed. The assessee is a wholesaler/reseller of Chemical items. The assessment for assessment year 2011-12 in the case of assessee was reopened on the basis of information received from the Sales Tax Department, Government of Maharashtra /DGIT (Investigation). As per information received, the assessee has obtained bogus purchase bills aggregating to Rs.10,25,725/- from the following hawala operators during the period relevant to the assessment year under appeal:

S.No.	Name of the party	Amount (Rs.)
1.	Bostam Enterprises	1,34,253
2.	Mahi Sales Pvt. Ltd.	93,660
3.	Everready Marketing Pvt. Ltd.	97,944
4.	Abhilasha Sales Pvt. Ltd.	5,82,786
5.	Ashley Traders Pvt. Ltd.	1,17,082
	Total	10,25,725

5. We find that during assessment proceeding, the Assessing Officer had issued notices u/s. 133(6) of the Income Tax Act, 1961 [in short 'the Act'] to the aforesaid parties. The said notices were received back un-served from the Postal Authorities with the remarks "Left". The Assessing Officer had also deputed the Ward Inspector to verify the whereabouts of the parties. The Ward Inspector vide reported dated 27/11/2017 reported that the parties are not available on the address mentioned in the purchase bills and on further enquiry it transpires that either the parties never existed on the given address or had left the premises seven to eight years back. We further observe that

during assessment proceedings the assessee failed to furnish any documentary evidence to substantiate movement/ delivery of goods. Thus, the assessee could neither establish authenticity of the dealers nor genuineness of the transactions. To prove genuineness of transaction the assessee furnished copies of the purchase invoices, ledger account of all the five parties, bank statement to show that payments have been made by cheque, copies of the invoices in respect of sales corresponding to purchases effected from alleged hawala operators and stock statement in respect of inputs and outputs of the items purchased from the alleged suppliers. Mere payment made through banking channels does not prove authenticity of the transactions. The Assessing Officer made addition of the entire alleged bogus purchases. In first appellate proceedings the CIT(A) upheld the findings of Assessing Officer to the extent of assessee's involvement in obtaining bogus purchase bills from suspicious dealers. However, he restricted the addition to 25% of bogus purchases. It is relevant to mention that the Assessing Officer has accepted the sales turnover declared by the assessee. In such like unproved transactions entire alleged bogus purchases cannot be disallowed. It is only the profit element embedded in such transaction that has to 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] Taking into consideration entirety of facts we are of the considered view that disallowance of 25% confirmed by the CIT(A) is on higher side. Restricting addition to 12.5% of the alleged bogus purchases would meet the ends of justice.

In the result, appeal by the assessee is partly allowed in the terms aforesaid.

Order pronounced in the open court on Friday the 5th day of August, 2022.

Sd/-

(S.RIFAUR RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 05/08/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

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)/Sr. Private Secretary
ITAT, Mumbai