

आयकर अपीलीय अधिकरण  
मुंबई पीठ " ए ", मुंबई

श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एस. रिफौर रहमान, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " A ", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER

आअसं.112/मुं/2023 (नि.व. 2010-11)  
ITA NO.112/MUM/2023(A.Y.2010-11)  
आअसं.113/मुं/2023 (नि.व. 2011-12)  
ITA NO.113/MUM/2023(A.Y.2011-12)

Atul J. Shah,  
611, 6<sup>th</sup> Floor, C-Wing,  
Shreepati Castle, 208/210 11<sup>th</sup> Khetwadi,  
Khetwadi Main Road, Mumba- 400 004.

PAN: AAZPS-0720-L

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer 19(1)(2),  
Matru Mandir,  
Mumbai 400007.

.....प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Tejas Shah

प्रतिवादी द्वारा/Respondent by : Shri Manoj Kumar Sinha

सुनवाई की तिथि/ Date of hearing : 23/03/2023

घोषणा की तिथि/ Date of pronouncement : 23/03/2023

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

These two appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [ in short 'the CIT(A)'] for the Assessment Years 2010-11 & 2011-12, respectively. Both the impugned orders are of even date i.e. 17/11/2022.

2. Since, the issues raised in both the appeals germinate from same set of facts and identical grounds (except for amounts) are raised by the assessee, these appeals are taken up together for adjudication and are decided by this common order.

3. For the sake of convenience, the facts are narrated from appeal for **assessment year 2010-11 in ITA No.112/Mum/2023.**

4. Shri Tejas Shah appearing on behalf of the assessee submitted that the assessee is engaged in the business of trading in ferrous and non-ferrous metals. The assessee had filed his original return of income declaring total income of Rs.2,98,850/- on 18/09/2010. The return of the assessee was processed u/s. 143(1) of the Income Tax Act, 1961 [ in short 'the Act' ]. The assessee has declared G.P of 0.25%. The assessment for any 2010-11 in the case of assessee was reopened on the ground that the assessee had obtained bogus purchase bills from hawala operators. The Id. Authorized Representative for the assessee submits that as per information received by the Assessing Officer from DGIT (Investigation), Mumbai, the assessee has taken bogus purchase entries from ten parties, aggregating to Rs.2,55,29,591/-. The Id. Authorized Representative for the assessee submits that admittedly the assessee failed to appear before the Assessing Officer to discharge his onus, the Assessing Officer estimated 25% as suppression of profits on alleged bogus purchases and made addition of Rs.63,82,398/-. Aggrieved by the assessment order dated 16/03/2016 the assessee carried the issue in appeal before the CIT(A). The CIT(A) restricted the addition to 12.5% of the alleged bogus purchases. The Id. Authorized Representative for the assessee submits that the sales declared by the assessee have been accepted by the Department. The Id. Authorized Representative for the assessee prays that the CIT(A) has estimated G.P on very much higher side, a reasonable estimate may be made to disallow alleged bogus purchases. He proposed disallowance of 2-3%.

5. Per contra, Shri Manoj Kumar Sinha representing the Department vehemently defended the impugned order. The Id. Departmental Representative submits that assessee had neither appeared before the Assessing Officer nor before the CIT(A). The assessee has failed to discharge his onus in proving genuineness of the purchases made from suspicious dealers. The assessee has obtained accommodation entries from declared hawala operators. The CIT(A) has been quite considerate in restricting the disallowance @12.5% on unproved purchases. The Id. Departmental Representative prayed for upholding the findings of the CIT(A).

6. Both sides heard, orders of the authorities below examined. Undisputedly, the assessee failed to furnish documentary evidence to prove genuineness of unproved purchases made from alleged hawala entry providers. In fact, the assessee has neither appeared before the Assessing Officer nor the CIT(A) to discharge his onus in proving genuineness of the suspicious dealers and purchases. The Assessing Officer and the CIT(A) estimated suppressed G.P on unproved purchases. Admittedly, the Assessing Officer has accepted the sales turnover and inventory declared by the assessee. In such circumstances, it is only the element of suppressed profits 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.] in trading of ferrous and non-ferrous metals, generally, the G.P ranges between 5% to 8%. Considering the entire facts of the case, we modify the order of CIT(A) and restrict the addition to 7.5% of the unproved purchases. We hold and order accordingly.

7. **In the result, appeal by the assessee is partly allowed.**

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8. The Id. Authorized Representative for the assessee submits that in assessment year 2011-12 the addition is on account of alleged bogus purchases. The

Assessing Officer disallowed 12.5% of alleged bogus purchases aggregating to Rs.5,13,47,017/-. The CIT(A) has upheld the same. The Id. Authorized Representative for the assessee submits that the submissions made while assailing additions in assessment year 2010-11 will equally apply for the assessment year under appeal.

9. The Id. Departmental Representative points that the reasons for making addition in the impugned assessment year is the same as was in 2010-11. In assessment year 2011-12 as well, the assessee did not appear before the authorities below and thus, failed to discharge his onus in proving genuineness of the purchases made from hawala operators.

10. Both sides heard. It is undisputed, that the facts and the reasons for making addition in the impugned assessment year is similar to assessment year 2010-11. Therefore, the findings given while adjudicating the appeal of assessee for assessment year 2010-11 will *mutatis mutandis* apply to assessment year 2011-12. For parity of reasons we restrict the disallowance on bogus purchases to 7.5%. Ergo, appeal of the assessee is partly allowed.

**11. To sum up, appeal of assessee for assessment year 2010-11 and 2011-12 are partly allowed.**

Order pronounced in the open court on Thursday the 23<sup>rd</sup> day of March, 2023.

Sd/-

(SHRI S.RIFAUR RAHMAN)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 23/03/2023

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 आयुक्तCIT/PCIT
- 4.. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt.Registrar)  
Mumbai