

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी" , मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
आअसं. 8058/मुं/2019 (नि.व 2011-12)
ITA NO.8058/MUM/2019(A.Y 2011-12)

ITO-33(2)(2),
Room No.846, 8th Floor,
Kautilya Bhavan, BKC
Mumbai 400 067

..... अपीलार्थी /Appellant

बनाम Vs.

Kirit Rashiklal Doshi,
Room No.8, 1st Floor, Poddar Bhuvan,
Parekh Lane, Kandivali (W),
Mumbai – 400 067.

PAN: **AAAPD-7604-H**

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Sanjay J. Sethi

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 10/06/2021

घोषणा की तिथि/ Date of pronouncement : 28/07/2021

आदेश/ ORDER

This appeal by the Revenue is directed against the order Commissioner of Income Tax(Appeals)-45, Mumbai [in short 'the CIT(A)'] dated 24/10/2019 for the assessment year 2011-12.

2. Shri Sanjay J. Sethi representing the Department submitted that the assessment for assessment year 2011-12 in the case of assessee was reopened on the basis of information received from DGIT (Inv), Mumbai. As per the

information received, the assessee had indulged in obtaining bogus purchase bills from nine dealers declared as hawala operators by the Sales Tax Department, Government of Maharashtra. During assessment proceedings, the Assessing Officer concluded that the assessee had obtained accommodation entries to the tune of Rs.28,85,753/- from six hawala operators. The assessee could neither produce suspicious dealers nor any confirmations from the said dealers. No documentary evidence in the form of delivery challan, lorry receipt, octroi receipt, etc. were furnished by the assessee to show trail of goods. Since, the assessee failed to discharge his onus in proving genuineness of purchases and the dealers, the Assessing Officer disallowed entire bogus purchases. In the First Appellate proceedings, the CIT(A) granted relief to the assessee by estimating profit margin on bogus purchases to 5%. Thus, the CIT(A) restricted the addition to Rs.1,44,287/- only. Now, the Revenue is in appeal against the relief granted by the CIT(A). The Id.Departmental Representative prayed for reversing the findings of CIT(A) and confirming the addition made in assessment order. To support his submissions the Id.Departmental Representative 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.

3. Submissions by Id.Departmental Representative heard, orders of authorities below examined. The assessee / respondent is engaged in trading of electrical goods. Undisputedly, the assessee failed to discharge his onus in proving authenticity of suspicious dealers and the purchases made from them. The sales turnover declared by the assessee was accepted by the Assessing

Officer, still the Assessing Officer disallowed 100% alleged bogus purchases. Once the sales turnover is accepted entire bogus purchases cannot be disallowed. It is only the profit element embedded in such transactions that can be brought to tax. The CIT(A) has estimated suppressed profit margin on unproved purchases at 5%. We find no reason to interfere with the findings of CIT(A), hence, impugned order is upheld.

4. In the result, appeal by the Revenue is dismissed sans merit.

Order pronounced in the open Court on Wednesday, the 28th day of July, 2021

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 28/07/2021

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.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai