

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No. 2725/MUM/2015, (A.Y. 2007-08)
ITA No. 2726/MUM/2015, (A.Y. 2008-09)
ITA No. 2727/MUM/2015, (A.Y. 2009-10)

Kaniyalal S. Shah,
706, Mountview, Yogi Hill,
Mulund-West, Mumbai 400 080
PAN:AAFPS 8481C

... Appellant

Vs.

The ITO 23(2)(4),
Mumbai

.... Respondent

Appellant by : Shri Jalpesh Vora
Respondent by : Shri Santosh Mankoskar

Date of hearing : 30/06/2016
Date of pronouncement : 30 /06/2016

ORDER

The captioned three appeals by the assessee are directed against a common order of the CIT(A) - 40 pertaining to assessment years 2007-08, 2008-09 & 2009-10 which in turns a have arisen out of separate orders passed by the Assessing Officer under section 143(3)r.w.s 147 of the Income Tax Act, 1961 (in short 'the Act') dated 18/03/2013

2. At the time of hearing, the Ld. Representative for the assessee pointed out that a common issue in all the appeals arises from the action of the CIT(A) in estimating of profit @ 15%, with respect to certain bogus purchases. Ld. Representative for the assessee submitted

that the limited plea of the assessee is that the estimation of profit @ 15% on the alleged bogus purchases is on a very high side considering that the normal evidences of profit in the case of the assessee ranges from 4% to 6%.

3. Since facts and circumstances on this aspect are common in all these years, I may refer to the appeal for assessment year 2007-08 in order to appreciate the controversy. The appellant is an individual, who is engaged in the business of dealer and supplier of iron, steel and allied products. The Assessing Officer noticed that assessee had effected purchases from certain parties, who were found to be indulging in bogus supplies by the Sales Tax authorities. In assessment year 2007-08 such purchases amounted to Rs.32,71,395/- from three parties namely J.B. Interlink, N.B. Enterprise and P.K.Trading Co. Based on the information received from the Investigation Wing, the Assessing Officer treated the aforesaid purchases as bogus and added a sum of Rs.32,71,395/- as unexplained investment in purchases under section 69C of the Act. In appeal, assessee assailed the order of the Assessing Officer in law and on facts. The CIT(A) considered the submissions put forth by the assessee and following certain judicial pronouncements held that the Assessing Officer was not justified in adding the entire amount of purchases as unexplained income. According to the CIT(A), assessee may have effected purchases from other parties, which were not recorded in the account books and the impugned purchases were merely accommodation entries obtained from such parties. Be that as it may, the CIT(A) proceeded to hold that only profit element on such

bogus purchases be brought to tax. Accordingly, CIT(A) estimated the profit on such alleged bogus purchases @15%.

4. In this background, the singular plea of the assessee is that the estimation of profit @15% is excessive and on a higher side considering that the normal profit ratio in the case of the assessee is 4% to 6%.

5. The Ld. Departmental Representative reiterated that estimation made by the CIT(A) was not on higher side.

6. Having considered the rival stands as also the facts and circumstances of the case, in my view, the estimation of profit with respect to the alleged bogus purchases made by the CIT(A) @15% is quite on a higher side considering that the profit ratios shown by the assessee in his line of business, being around 6%. In any case, the estimation of profits with respect to the bogus purchases cannot correspond to the normal business operations and, therefore, in my view it would meet the ends of justice if the profit on the impugned purchases is estimated @ 10%. Thus, I set-aside the order of CIT(A) to that extent and direct the Assessing Officer to restrict the addition to 10% of the impugned purchases instead of 15% directed by the CIT(A). Thus, on this aspect assessee partly succeeds. The aforesaid decision shall prevail for the additions made by the Assessing Officer on account of alleged bogus purchases for all the three captioned assessment years.

7. In assessment year 2007-08, the only other issue raised is with regard to denial of deduction under Chapter VIA to the extent of 50,000/-. This Ground was not pressed at the time of hearing and is accordingly dismissed.

8. In assessment year 2008-09, the other issue is against the action of the CIT(A) in disallowing 10% of expenses out of transport charges, conveyance, hel majuri and staff welfare amounting to Rs.36,120/-. The Ld. Representative for the assessee pointed out that the account books of the assessee are subject to audit under section 44AB of the Act and the Assessing Officer has not found any particular infirmity or discrepancy in the claim of expenses so as to justify any adhoc disallowances.

9. In my considered opinion, the disallowance is purely based on surmises, which is unsustainable and is hereby directed to be deleted.

10. In assessment year 2008-09, the only other issue is with regard to denial of deduction under Chapter VIA of the Act to the extent of 75,000/-. This has not been pressed at the time of hearing and is accordingly dismissed.

11. In assessment year 2009-10, apart from the issue relating to profit on bogus on purchases, which have already been dealt with by me in earlier paras, the only other issue is regarding adhoc disallowance of 10% of various expenses amounting to Rs.50,037/-. The said disallowance being purely on adhoc basis and on surmises is directed to be deleted.

12. In the result, all the captioned appeals of the assessee are partly allowed, as above.

The above decision was pronounced in the open court at the conclusion of hearing in the presence of both the parties on 30/06/2016.

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Dated 30 /06/2016

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai