

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI C.N. PRASAD, JUDICIAL MEMBER**

ITA NOS. 4869 & 4870/MUM/2015 : A.Ys : 2009-10 & 2010-11

ITO-14(3)(4), Mumbai
(Appellant)

Vs. M/s. Simla Steels Pvt. Ltd.,
Shop No. 2, Gaffoor Khan Estate,
LBS Marg, Kurla (W),
Mumbai 400 070 (Respondent)
PAN : AAICS9256K

ITA NOS. 4677& 4678/MUM/2015 : A.Ys : 2009-10 & 2010-11

M/s. Simla Steels Pvt. Ltd.,
Shop No. 2, Gaffoor Khan Estate,
LBS Marg, Andheri (E),
Mumbai 400 021 (Appellant)
PAN : AAICS9256K

Vs. ITO-14(3)(4), Mumbai
(Respondent)

Assessee by : None
Revenue by : Shri V. Justin

Date of Hearing : 06/12/2017
Date of Pronouncement : 19/01/2018

ORDER

PER G.S. PANNU, AM :

The captioned four appeals relate to the same assessee and, therefore, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. At the time of hearing, it was noted that the Id. DR appeared for the Revenue whereas no authorised representative has put in appearance on behalf of the assessee. The record of proceedings also reveal that on earlier occasions the appeals were adjourned on more than one occasion on the request of the assessee. Considering that the assessee or any of its authorised representatives have not put in appearance, following Rules 24 & 25 of the Income Tax (Appellate Tribunal) Rules, 1963, the appeals are being disposed of *ex parte qua* the assessee after hearing the Id. DR on merits.

3. First, we take up the cross-appeals for Assessment Year 2009-10 which are directed against the order of CIT(A)-22, Mumbai dated 15.06.2015, which in turn have arisen from the order passed by the Assessing Officer, Mumbai dated 27.03.2014 under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act').

4. In the cross-appeals, although assessee and the Revenue have raised multiple Grounds of appeal, but the entire dispute arises from the action of Assessing Officer in treating the purchases made from some of the parties as bogus. In order to appreciate the controversy, the following discussion is relevant. The assessee before us is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of reseller of MS pipes, MS angles, MS plates, etc. The Assessing Officer noted, on the basis of the information received from the Sales Tax Department of Maharashtra, that assessee had effected purchases from eight parties detailed in para 5.2 of the assessment order of Rs.5,14,84,630/- and such parties were mere *hawala* dealers, i.e. such parties were only issuing

accommodation bills without effecting actual sales/purchases. The relevant discussion in the assessment order reveals that the Assessing Officer was not satisfied with the explanation furnished by the assessee and, in particular, it is recorded that assessee could not prove the delivery of the goods stated to have been purchased from the eight parties. Accordingly, the Assessing Officer held that assessee had failed to establish the genuineness of the purchases amounting to Rs.5,14,84,630/-. Having concluded so, the Assessing Officer added only a sum of Rs.1,28,71,158/- to the returned income, which was 25% of such purchases. Thus, as against the returned income of Rs.5,32,060/-, the total income was assessed at Rs.1,34,03,220/- after making the addition of Rs.1,28,71,158/-. The assessee challenged the matter in appeal before the CIT(A), who affirmed the action of the Assessing Officer in-principle, but reduced the addition to 12% of the purchases instead of 25% made by the Assessing Officer thereby retaining the addition of Rs.61,78,115/-. Against such action of the CIT(A), Revenue as well as the assessee are in appeal before the Tribunal. The Revenue is in appeal contesting the scaling down of addition by the CIT(A) whereas the assessee has contested sustenance of part of the addition by the CIT(A).

5. At the time of hearing, the Id. DR has reiterated the action of the Assessing Officer in assessing the amount of addition at Rs.1,28,71,158/-, being 25% of the total purchases.

6. Having perused the orders of the authorities below, it is noticed that CIT(A) has retained the addition of 12% following the ratio of the judgment of the Hon'ble Gujarat High Court in the case of *CIT vs. Simit P. Sheth*, 356 ITR 451 (Guj). Ostensibly, in terms of the aforesaid judgment of the Hon'ble

Gujarat High Court, the entire purchase price could not be assessed, but only the profit element embedded in the unexplained purchases could be assessed to tax. In fact, in the case before us, said position has been accepted by the Assessing Officer himself because instead of bringing the entire purchase price to tax, he has estimated the profit element embedded in the purchases @ 25% and brought the same to tax. The CIT(A) has adopted the rate of 12% following the ratio of the judgment of the Hon'ble Gujarat High Court in the case of *Simit P. Sheth (supra)*.

7. Insofar as the plea of the assessee for deletion of the entire addition is concerned, in our view, the same is quite unjustified because apart from other aspects, an undisputed finding of the Assessing Officer is that the assessee could not prove the delivery of the goods stated to have been purchased from the eight parties in question. In para 5.7 of the assessment order, the Assessing Officer has noted specific failure of the assessee to substantiate with supporting documentary evidence the transportation and delivery of goods. In such a situation, the Assessing Officer made no mistake in treating the purchases as being unexplained. Insofar as the consequential quantum amount assessable to tax is concerned, at the level of the Assessing Officer as well as before the CIT(A), it has been a matter of estimation. The Assessing Officer estimated it at 25% whereas the CIT(A) has scaled it down to 12%. In our considered opinion, in such a situation, what is important to see is the likely savings that the assessee would have earned in making purchases from the grey market instead of the stated purchases in the books of account, which obviously have been found to be bogus. In that context, and considering the assessee's line of business, in our view, the estimation of profit element @ 12% made by the CIT(A) is quite reasonable and

appropriate, which we hereby affirm. In this view of the matter, insofar as Assessment Year 2009-10 is concerned, we hereby dismiss the appeals of the Revenue as well as of the assessee.

8. Insofar as the cross-appeals for the Assessment Year 2010-11 are concerned, the issues are *pari materia* to those considered by us in Assessment Year 2009-10 except for the figures which are different and, therefore, our decision in the cross-appeals for Assessment Year 2009-10 applies *mutatis mutandis* to these cross-appeals also.

9. In the result, both the appeals filed by the Revenue as well as the assessee are dismissed.

Order pronounced in the open court on 19th January, 2018.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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

Mumbai, Date : 19th January, 2018

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "E" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai