



ITA Nos.200-201,253- 254/Mum/2016

S.S.Metal & Alloys

Assessment Years: 2009-10 & 2011-12

आयकर अपीलीय अधिकरण “के” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SHRI MAHAVIR SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No. 200 & 201/Mum/2016
(निर्धारण वर्ष / Assessment Years: 2009-10 & 2011-12)

S.S.Metal & Alloys No.F/72,1 st Floor Eternity Mall, L.B.S.Marg Thane(W) - 400 604	बनाम/ Vs.	Income Tax Officer Ward-3(5) Ashar IT Park, 6 th Floor, B-Wing, Room No. 5 Road No. 16-Z Wagle Industrial Estate Thane (W) – 400 604
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAEFS-7374-M		
(पीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

&

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स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAEFS-7374-M		
(पीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Subodh Ratnaparkhi, Ld. AR
Revenue by	:	V.Jenardhanan, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	10/04/2018
घोषणा की तारीख / Date of Pronouncement	:	11/04/2018



आदेश / ORDER

Per Bench

1. These are cross-appeals for Assessment Years [AY] 2009-10 & 2011-12 which contest common order of *Ld. Commissioner of Income Tax (Appeals)-2, Thane [CIT(A)]*, ITA No. 253 & 254/13-14 dated 28/10/2015 *qua* certain addition on account of *alleged bogus purchases*. Since common issues are involved, we dispose-off the same by way of this common order for the sake of convenience and brevity.

2.1 Facts as emanating from Assessment Order for AY 2009-10 dated 31/01/2014, as passed by *Ld. Income Tax Officer, Ward-3(3), Thane u/s 143(3) read with Section 147*, are that the assessee being *resident firm* engaged in the business of *trading of Iron & Steel Scrap* has been assessed at Rs.74.52 Lacs, *inter-alia*, after certain additions on account of *alleged bogus purchases* of Rs.65.87 Lacs as against returned income of Rs.7.35 Lacs *e-filed* by the assessee on 30/09/2009. The original return filed by the assessee was processed u/s 143(1). The reassessment proceedings were initiated by issuance of notice u/s 148 dated 18/09/2013 which was followed by statutory notices u/s 143(2) & 142(1).

2.2 The reassessment proceedings were initiated upon receipt of certain information from *Sales Tax Department, Maharashtra* regarding dealers indulging in *bogus purchase bills* and it was noted that the assessee stood beneficiary of such *bogus purchase bills* to the tune of Rs.65,87,051/- from seven such parties, the details of which have been extracted at *Page number-2* of the quantum assessment order. The



assessee defended the purchases made by him but notices issued u/s 133(6) to the aforesaid suppliers to confirm the transactions elicited no response. Finally not convinced with assessee's submissions and explanations, Ld. AO disallowed the same and added the same to the income of the assessee u/s 69C.

3. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 28/10/2015 where Ld. CIT(A), after considering the factual matrix and relying upon certain judicial pronouncements restricted the impugned additions to Rs.9,58,390/- by applying the *Gross Profit Rate of 16.10%* reflected by the assessee in AY 2012-13 to the turnover of impugned AY and deleted the balance addition. The disallowance, in effect, as sustained by Ld. CIT(A) came to 14.55% of *alleged bogus purchases* of Rs.65,87,051/. Aggrieved, the assessee as well as the department is in further appeal before us.

4. The Ld. Departmental Representative [DR] submitted that the assessee could not substantiate the actual delivery of material and payment through banking channel alone was not sufficient to prove the genuineness of the purchases. Per *Contra*, Ld. Authorised Representative for assessee [AR] drew attention to the fact that the assessee was a trader and could not the achieve the turnover without actual purchase of material and therefore, the addition as sustained by Ld. CIT(A) was on the higher side. Our attention has been drawn to the supporting documents placed in the *paper-book*.

5. We have carefully heard the rival contentions and perused relevant material on record. We are of the considered opinion that there could be



no sale without purchase of actual material since the assessee was engaged in *trading activity*. The sales turnover achieved by the assessee has not been disputed by the revenue. The assessee was in possession of primary purchase documents and the payment to the suppliers was through banking channels. The assessee was maintaining adequate stock records. At the same time, the assessee could not produce any party for confirmation of the account and notices sent u/s 133(6) elicited no response. All these factors cast serious doubt on assessee's claim. Therefore, in such a situation, the addition, which could be made, was to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the *grey market* and undue benefit of VAT against such bogus purchases, which Ld. CIT(A) has rightly done so. However, keeping in view the factual matrix and assessee's nature of business, we find the estimated effective rate of 14.55% to be on the higher side and therefore we reduce the same to 8% of *alleged bogus purchases*, which comes to Rs.5,26,964/-. The order of Ld. CIT(A) stand modified to that extent. Resultantly, the revenue's appeal stands dismissed whereas the appeal filed by the assessee stand partly allowed.

6. The assessee, in AY 2011-12, has been saddled with similar additions of Rs.1,68,15,478/- on account of *alleged bogus purchases*. The Ld. CIT(A) has estimated the impugned additions at 16.62% of *alleged bogus purchases*. We find that the impugned order is common order for AY 2009-10 as well as for AY 2011-12. Therefore, factual matrix being similar, taking the same stand, we restrict the impugned



ITA Nos.200-201,253- 254/Mum/2016
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additions to 8% of *alleged bogus purchases* which comes to Rs.13,45,238/-. Resultantly, the revenue's appeal stands dismissed whereas the appeal filed by the assessee stand partly allowed.

7. In nutshell, ITA Nos. 253-254/Mum/2016 stands dismissed whereas ITA Nos. 200-201/Mum/2016 stands partly allowed.

Order pronounced in the open court on 11th April, 2018

Sd/-
(Mahavir Singh)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 11 . 04.2018
Sr.PS:- Thirumalesh

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai