

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "SMC" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA Nos.2971 & 2972/PUN/2016
निर्धारण वर्ष / Assessment Years : 2009-10 & 2011-12

ITO, Ward-1(4), Nashik अपीलार्थी/Appellant

Vs.

M/s. Maharashtra Industries &
Re-Rolling Mills,
Plot No.G-16, MIDC Industrial Area,
Ambad Link Road, Nashik
PAN : AAMFM1272G

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Pankaj Garg
प्रत्यर्थी की ओर से / Respondent by : Shri Sanket Joshi

सुनवाई की तारीख / Date of Hearing : 16.05.2018	घोषणा की तारीख / Date of Pronouncement: 17.05.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are 2 appeals filed by the Revenue under consideration involving Assessment Years 2009-10 and 2011-12. They are filed against the common order of CIT(A)-1, Nashik, dated 06-10-2016.

2. Grounds raised by the Revenue are common for both the assessment years under consideration in verbatim, except the figures. Therefore, the grounds raised by the Revenue for A.Y. 2009-10 are reproduced below :

"1.1 Whether on the facts and in circumstances of the case and in law, the CIT(A)-1, Nashik was justified in deleting the addition of Rs.14,63,641/- on account of alleged bogus purchases from Hawala dealers/parties.

1.2 Whether on the facts and in circumstances of the case and in law, the CIT(A)-1, Nashik was justified in deleting the addition even when the assessee has failed to discharge its onus of giving evidence for proving the purchases.

1.3 Whether on the facts and in circumstances of the case and in law, the CIT(A)-1, Nashik was justified in deleting the addition even when he has admitted in Para 4.88 that the assessee has not produced the parties from whom the purchases were made either before the A.O. or CIT(A).

1.4 Whether on the facts and in circumstances of the case and in law, the CIT(A)-1, Nashik was justified in deleting the addition even when the assessee has not produced the quantitative tally either before the A.O. or CIT(A).

2. The order of the CIT(A) may be vacated and that of the Assessing Officer may be restored.

3. The assessee craves leave to add, amend, alter or delete any ground of appeal."

3. Briefly stated relevant facts for A.Y. 2009-10 are that the assessee is a Firm and is engaged in the business of Manufacturing of Steel Rolling Mills. Assessee filed the return of income on 30-09-2009 declaring total income of Rs.1,23,200/- for the assessment year under consideration. On the basis of information received from the Investigation Section of Sales Tax Department, AO issued notice u/s.148 of the Act to the assessee on 26-09-2013 on finding that the assessee made Hawala purchases to the tune of Rs.14,63,641/-. In response to the same, assessee filed revised return on 13-03-2015 declaring income of Rs.15,86,840/-. Assessee has shown net profit at 4.51% on the total turnover of Rs.1,79,67,808/-. At the end of the assessment proceedings u/s.143(3) r.w.s. 147 of the Act, the AO made entire addition of Rs.14,63,641/- on account of bogus purchases.

4. Aggrieved with the order of AO, the assessee filed an appeal before the CIT(A). The CIT(A) after elaborately discussing various judgments of Hon'ble Supreme Court, High Courts and the different Benches of ITAT, restricted the disallowance to 25% of such bogus purchases which comes to Rs.3,65,910/-. Thus, the CIT(A) gave relief of Rs.10,97,731/-.

Similarly, for A.Y. 2011-12, the AO made addition of Rs.47,00,720/- on account of bogus purchases and the CIT(A) restricted the said disallowance to 25% of such bogus purchases which comes to Rs.11,75,180/-.

Assessee is not in appeal against the order of CIT(A) in confirming the addition of 25% of the bogus purchases for both the assessment years under consideration.

5. Challenging the order of CIT(A) the Revenue filed the present appeals before the Tribunal raising the aforesaid grounds.

6. Ld. DR for the Revenue relied on the order of the AO. He submitted that assessee has not produced the parties before the authorities to demonstrate that the purchases made by him are genuine. Therefore, Ld. DR for the Revenue prayed for confirming the entire addition of bogus purchases instead of 25% adopted by the CIT(A).

7. Ld. Counsel for the assessee submitted that the assessee accepted the decision of the CIT(A) who restricted the disallowance to 25% of purchases. Otherwise, Ld. Counsel submitted that this is the case where the assessee maintained the required evidences by way of purchase bills and account extracts establishing the trail of goods. Further, Ld. Counsel submitted that the Pune Bench of the Tribunal in a series of decisions on this issue has been restricting the addition to 10% of the bogus purchases. In support of his case, Ld. Counsel for the assessee filed the order of Pune Bench of the Tribunal in the case of ACIT Vs. Shri Nitin Ramchandra Gite and Vice versa in ITA No.1732/PUN/2015 and CO No.46/PUN/2017, dated 13-10-2017 for the A.Y. 2011-12.

8. I heard both the sides on the solitary issue of restricting to 25% of bogus purchases by the CIT(A) and perused the decision relied on by the Ld. Counsel for the assessee. I find it relevant to reproduce the finding given by the CIT(A) at Para Nos. 4.88 and 4.89 of his order and the same is extracted as follows :

"4.88 Adverting to the fact in the instant case, the assessee is in the business of manufacturer in steel rolling mills. The parties who are in dispute for purchases, is neither produced before me nor before the AO. In absence of production of

parties the issue that purchases were indeed from them cannot be verified. The consumption detail is no testimony of the fact that the purchases are not inflated and parties are not bogus.

*4.89 Thus in my opinion the facts on record demonstrate that this is **not a case of bogus purchase but a case of inflated purchases** and at best from bogus parties. Considering the facts and circumstances of the case, to meet the ends of justice, the AO is directed to restrict the disallowance of purchases to 25% of purchases, i.e. Rs.3,65,910/- for A.Y. 2009-10 & Rs.11,75,180/- for A.Y. 2011-12."*

The revenue wants confirming of entire addition of Rs.14,64,641/- and Rs.47,00,720/- for A.Yrs. 2009-10 and 2011-12 respectively. I find the said arguments of the Revenue is unsustainable in view of catena of decisions on this issue. As such, there is no problem with the trail of goods as well as on the payment to the parties. In such circumstances, we find the order of CIT(A) is fair and reasonable and does not call for any interference. Accordingly, the grounds raised by the Revenue for both the assessment years are dismissed.

9. In the result, both the appeals of the Revenue are dismissed.

Order pronounced on this 17th day of May, 2018.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 17th May, 2018.
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Nashik
4. आयकर आयुक्त / The CIT-1, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "**SMC**" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune