

आयकर अपीलीय अधिकरण “जे” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JM AND SHRI N. K. PRADHAN, AM

आयकर अपील सं./I.T.A. Nos. 3413/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2010-11)

Pratapram Choudhary Room No. 103/55, 60 Shree Swami Samarth, 2 nd Kumbharwada Lane, Mumbai – 400 004	बनाम/ Vs.	ITO-19(2)(5), Room No. 210, Matru Mandir, Tardeo Road, Mumbai-400 007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AGSPC 8984 F		
(Assessee)	:	(Revenue)

&

आयकर अपील सं./I.T.A. Nos. 3253/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2010-11)

ITO-19(2)(5), Room No. 210, Matru Mandir, Tardeo Road, Mumbai-400 007	बनाम/ Vs.	Pratapram Choudhary Room No. 103/55, 60 Shree Swami Samarth, 2 nd Kumbharwada Lane, Mumbai – 400 004
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AGSPC 8984 F		
(Revenue)	:	(Assessee)

अपीलार्थी की ओर से / Appellant by	:	Shri Saurabh Desh Pandey
प्रत्यर्थी की ओर से/Respondent by	:	Shri Gautam Salechan
सुनवाई की तारीख / Date of Hearing	:	08.05.2018
घोषणा की तारीख / Date of Pronouncement	:	01.06.2018

आदेश / ORDER

Per Saktijit Dey, J. M.:

The aforesaid cross appeals by the Department and the assessee arise out of the order dated 09.02.2017 of Id. Commissioner of Income Tax (Appeals) – 29, Mumbai for the assessment year 2010-11.

2. The only dispute between the parties is with regard to the addition made on account of bogus purchases.

3. Briefly the facts are, the assessee an individual is engaged in the business of trading in ferrous and non-ferrous metals through his proprietary concern M/s. Godavari Metal Ltd. For the assessment year under dispute, the assessee filed his return of income on 13.09.2010 declaring total income of Rs.5,22,580/-. The return of income filed by the assessee was processed u/s. 143(1) of the Act. Subsequently, on the basis of the information received from the DGIT, Investigation that as communicated by the Sales Tax Department, the assessee during the year has purchased goods worth of Rs.3,87,68,532/- from nine parties who are identified as hawala operators and accommodation entry providers, the Assessing Officer reopened the assessment u/s. 147 of the Act. During the assessment proceeding, the Assessing Officer called upon the assessee to furnish documentary evidences to prove the genuineness of the purchases. As observed by the Assessing Officer, the assessee failed to produce accounts and stock register. Further, from the details furnished by the assessee, the purchases and sales were found to be not matching. The Assessing Officer observed that the assessee failed to produce delivery challan, lorry receipt, transportation bills etc. To verify the genuineness of the purchases, though the assessing officer issued notices u/s. 133(6) of the Act to the concerned parties, all such notices returned unserved. Thus, on the basis of the aforesaid facts, the Assessing Officer concluded that the assessee has failed to prove the genuineness of the

purchases from the concerned parties. However, since the assessee has effected sales of the corresponding goods, the Assessing Officer observed that the assessee was actually in the possession of the goods which the assessee might have purchased from grey market. Thus, on the aforesaid observation, the assessing officer added back the amount of Rs.3,87,68,532/- representing the purchases made from alleged hawala operators.

5. The assessee challenged the addition before the Id. CIT(A).

6. The Id. CIT(A) after considering the submissions of the assessee in the context of facts and materials on record, upheld the rejection of books of account of the assessee, since the assessee failed to prove the genuineness of the source of purchase. However, considering the fact that the Assessing Officer has not disputed the sales and in the absence of corresponding purchases, the assessee could not have effected the sales, he held that only the profit element embedded in such purchases can be added to the income of the assessee. Accordingly, he directed the Assessing Officer to restrict the addition to 12.5% of the alleged bogus purchases.

7. Being aggrieved of the aforesaid decision of the Id. CIT(A), both the assessee and the Revenue are in appeal before us.

8. We have considered rival submissions and perused the materials available on record. As could be seen from the facts on record, the Sales Tax Authorities have identified certain dealers/entities as hawala operators as they were only providing

accommodation entries/bills without entering into actual sale transactions with physical delivery of goods. The assessee is found to be one of the beneficiaries of such transactions. In the course of assessment proceedings, when the assessing officer wanted to verify the genuineness of the purchases by issuing notices u/s. 133(6) of the Act, all such notices returned unserved. Even, the assessee failed to produce delivery challan, transportation bills, and confirmation of the concerned parties and also failed to produce the concerned parties to prove the source of such purchases. In the aforesaid circumstances, the claim of the assessee that he has purchased the goods from the declared sources is unacceptable. Hence, the Assessing Officer was correct in rejecting the books of accounts of the assessee. However, at the same time, it cannot be ignored that the Assessing Officer has not disputed the sales effected by the assessee and has observed that in the absence of corresponding purchases, the assessee could not have effected the sales. He has also come to a conclusion that the goods are actually in the possession of the assessee which indicates that the assessee must have purchased them from grey market.

9. In the aforesaid facts and circumstances, the view taken by the Id. CIT(A) that only the profit element embedded in such sales can be added as income, appears to be the most reasonable view which could be taken in the given facts and circumstances. As regards the rate of profit adopted at 12.5% by the Id. CIT(A), we find it to be most reasonable and appropriate. Hence, we do not intend to interfere with the decision of the Id. CIT(A) on the issue.

10. In view of the aforesaid, we uphold the decision of the Id. CIT(A) while dismissing the grounds raised by the assessee as well as the Department.

11. In the result, both the appeals are dismissed.

Order pronounced in the open court on 01.06.2018

Sd/-

Sd/-

(N. K. Pradhan)

(Saktijit Dey)

लेखा सदस्य / Accountant Member

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 01.06.2018

व.नि.स./Roshani, Sr. PS

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