

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

BEFORE SHRI R.C. SHARMA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 477/MUM/2018
Assessment Year: 2010-11**

M/s Stripco Springs Private Limited, 7/8 Neelkamal, Roshan Nagar, Borivali- 400092 PAN: AAACS7984A (Appellant)	Vs.	The ITO-13(2)(4), Mumbai (Respondent)
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Assessee by : None (Assessee's letter dated
05.06.2018)

Revenue by : Ms. N. Hemalatha (DR)

Date of Hearing: 08/06/2018
Date of Pronouncement: 19/06/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 15.10.2017 passed by the Ld. Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-21, Mumbai, for the assessment year 2010-11, whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against assessment order passed u/s 143 (3) read with section 147 of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee company engaged in the business of manufacturing of steel metals components, filed its return of income for the assessment year under consideration declaring 'nil' income and current year loss at Rs. 38,736/-. The case was re-opened u/s 147 of the Act on the basis of information received from the Sales Tax Department to the effect that the assessee obtained accommodation entries from M/s Macos Iron

and Steel Pvt. Ltd. during the F.Y. 2009-10 to show the purchases worth Rs. 5,32,529/-.

3. In response to the Notices u/s 143 (2) and 142 (1), the authorized representative of the assessee appeared before the AO, filed certain details and discussed the case. Since, the assessee failed to establish the genuineness of transaction, the AO made addition of 30% of the bogus purchases amounting to Rs. 1,59,759/- u/s 69C of the Act. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee restricted the addition to 15%. Still aggrieved, the assessee is in appeal before the Tribunal.

4. The assessee has preferred this appeal before the Tribunal on the following effective grounds:-

I. 1.) *“The Commissioner of Income Tax (Appeal)-21, (“the CIT (A)”) erred in confirming the action of ITO in reopening the case without any basis or reasons to believe that the income had escaped assessment.*

2.) *The appellant prays that the reopening proceedings be set aside as it is invalid and bad in law.*

Without prejudice to above

II. 1) *The CIT (A) erred in confirming the action of ITO in passing order u/s 143(3) r.w.s. 147 of the Act without having jurisdiction to do so thereby rendering the entire proceedings as ab initio void, illegal and bad in law.*

2) *The appellant prays that the reopening proceedings be set aside as invalid and bad in law.*

Without prejudice to above

III. 1) *The CIT (A) erred in confirming the assessment order passed u/s 143 (3) r.w.s. 147 without affording an*

opportunity to cross examine or verify the material on the basis on which the reopening was completed.

2) The appellant prays that no opportunity to cross examine was provided and therefore the order passed u/s 143 (3) r.w.s. 147 be set aside as being illegal and bad in law.

Without prejudice to above

IV. *1) The CIT (A) erred in confirming the action of ITO in rejecting books of accounts by invoking provisions u/s 145 (3) of the Act without any basis or application of mind.*

2) The appellant prays that act of rejection of books of accounts by the Assessing Officer is unjustified and unwarranted.

Without prejudice to above

V. *1) The CIT (A) erred in rejecting the appellants claim for purchases to the tune of Rs. 79,865/- being 50% of the addition made by the Assessing Officer by treating the same as unexplained expenditure u/s 69C of the Act.*

2) The appellant prays that the disallowance u/s 69C of Rs. 79,865/- be deleted.

Without prejudice the appellant prays that the addition made u/s 69C be proportionately reduced.”

5. This case was fixed for hearing on 07.06.2018. On the said date when the case was called out for hearing none appeared on behalf of the assessee. However, the assessee had filed a written submission with the request to decide the appeal in accordance with the decision of the ITAT rendered in the assessee's own case for the A.Y. 2011-12. Accordingly, we decided to dispose

of the appeal on the basis of the material on record after hearing the Departmental Representative (DR).

6. Before us, the Ld. DR submitted that in the present case the Ld.CIT (A) has restricted the addition to 15% of the total amount of bogus purchases in question as against the 30% addition made by the AO. The Ld. DR further submitted that 15% addition is reasonable in the facts and circumstances of the case no interference is warranted.

7. We have perused the material on record. We notice that the co-ordinate Bench has dealt with the identical issue in the assessee's own appeal ITA No1000/Mum/2018 for the A.Y. 2011-12 and the Bench has restricted the addition to 12.5% of the total amount of bogus purchases determined by the AO. The relevant portion of the Tribunal's order reads as under:-

“3. Aggrieved, the assessee contested the same with partial success before Ld. CIT (A) vide impugned order dated 20/11/2017 wherein Ld. CIT, while upholding the reassessment proceedings, reduced the estimated additions to 12.5% against which the assessee is in further appeal before us. The Ld. DR has placed reliance on the stand of lower authorities.

4. In so far as the ground of validity of reassessment proceedings as raised by the assessee is concerned, we find no merit in the same since the return was processed u/s 143 (1) and the new tangible material came into the possession of Ld. AO in the shape of information from concerned authorities which pointed at escapement of income and therefore, the jurisdiction was validly assumed by the Ld. AO.

5. So far as quantum of additions is concerned, we are of the considered opinion that there could be no sale without purchase/ consumption of material since the assessee was engaged as manufacturer of sheet metal components. The sales turnover achieved by the assessee has not been disputed by the revenue and the payments were through banking channels. The assessee was in possession of primary purchases

documents. At the same time, the assessee could not conclusively substantiate the purchases made by him and failed to produce any of the party to confirm the transactions. All these factors cast a 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. Therefore, finding the same in order, we dismiss the assessee's appeal."

8. The facts of the present case and the issues involved in the present case are identical to the facts and the issues involved in the assessee's own appeal for the assessment year 2011-12 discussed above. Since, the co-ordinate Bench has confirmed the addition to 12.5% of the total amount of bogus purchases in the assessee's own appeal discussed above, we respectfully following the decision of the coordinate Bench, modify the order of the Ld. CIT (A) and restrict the addition to 12.5% of the total amount of bogus purchases made by the assessee during the year relevant to the assessment year under consideration.

In the result, appeal filed by the assessee for assessment year 2010-2011 is partly allowed.

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

Sd/-
(R.C. SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 19/06/2018

Alindra, PS

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

आदेश 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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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