



IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.960/Mum./2018
(Assessment Year : 2009-10)

Nageshwar Steel House
22, Bhandari Street, 1st Floor
Kumbharwada, Mumbai 400 004
PAN – AAGFN7741K

..... Appellant

v/s

Income Tax Officer
Ward-19(2)(4), Mumbai

..... Respondent

Assessee by : Shri Vimal Punamiya
Revenue by : Shri S.K. Bepari

Date of Hearing – 11.09.2018

Date of Order – 11.09.2018

ORDER

Aforesaid appeal has been filed by the assessee challenging the order dated 10th October 2017, passed by the learned Commissioner (Appeals)-30, Mumbai, for assessment year 2009-10.

2. Grounds no.1 to 4, are not pressed, hence, dismissed.
3. In ground no.5, the assessee has challenged the addition of ₹ 15,59,175, made on account of bogus purchases.
4. Brief facts are, the assessee a Hindu Undivided Family (HUF) is carrying on business of trading in ferrous and non-ferrous metals. For

the assessment year under dispute, the assessee filed its return of income on 30th September 2009, declaring income of ₹ 99,541. The return of income filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 (for short "*the Act*"). Subsequently, on the basis of information received from the DGIT (Inv.), Mumbai, as well as Sales Tax Department, Maharashtra Government that the assessee has shown purchases of ₹ 1,24,74,405 from 17 parties who have been identified as hawala operators providing accommodation bills, the Assessing Officer re-opened the assessment under section 147 of the Act by issuing a notice under section 148 of the Act. In course of the assessment proceedings, the Assessing Officer called upon the assessee to furnish necessary details to prove the genuineness of purchases. He also called upon the assessee to furnish the address of the concerned parties. As observed by the Assessing Officer, notices issued under section 133(6) of the Act to the concerned parties were returned unserved in all cases. He also observed that the assessee was not able to prove the delivery of goods to the assessee's premises. Thus, he proceeded to treat the purchases effected from the concerned parties as non-genuine. However, being of the view that the assessee has indulged in such activity to suppress true profit for reducing the tax liability and since the assessee has recorded such profits in the books of account, he proceeded to estimate the profit element embedded in such purchases

@ 12.5% which resulted in an addition of ₹ 15,59,175. Though, the assessee challenged the aforesaid addition before the first appellate authority, however, the learned Commissioner (Appeals) refused to deviate from the decision of the Assessing Officer.

5. The learned Authorised Representative submitted that the assessee has shown a gross profit rate of 3% and it has also paid VAT on the alleged bogus purchases @ 4%. Thus, he submitted, considering the profit ratio in this particular line of business, the maximum addition which can be made is @5.5% of the non genuine purchases. The learned Authorised Representative submitted, in case of assessee's sister concern i.e., M/s. Steel Line (India) which is in similar line of business, the Tribunal while deciding identical issue has applied profit rate of 2%, however, the learned A.R. submitted that the assessee is agreeable to estimation of profit @ 5.5% of the alleged bogus purchases.

6. The learned Departmental Representative relied upon the observations of the learned Commissioner (Appeals).

7. I have considered rival submissions and perused the material on record. It is evident, though the Assessing Officer has treated the purchases of ₹ 1,24,73,405 claimed to have been made from 17 parties as non-genuine, however, he has restricted the addition by

estimating the profit @ 12.5% of such non-genuine purchases. The learned Commissioner (Appeals) has also agreed with the aforesaid view of the Assessing Officer. Therefore, the dispute before us is confined to the profit rate to be adopted for making the addition. It is the contention of the learned Authorised Representative that the assessee has shown a gross profit rate of 3% on the purchases made and has also paid VAT @ 4% on such purchases. Therefore, even if the profit rate of 12.5% is adopted, the gross profit already shown by the assessee as well as VAT paid should be reduced from such profit rate adopted by the Departmental Authorities and the balance amount may be added. I find merit in the aforesaid submissions of the assessee. Considering the fact that the assessee has shown gross profit rate of 3% and has also paid VAT on such purchases @ 4%, I direct the Assessing Officer to restrict the addition to 5.5% of the non-genuine purchases of ₹ 1,24,73,405 and delete the balance addition. This ground is partly allowed.

8. Ground no.6 is against levy of interest under section 234B and 234C of the Act.

9. Levy of interest under the aforesaid provisions being consequential is not required to be adjudicated. Suffice to say, computation of interest under section 234C of the Act is to be made on the basis of returned income. This ground is disposed off accordingly.

10. Ground no.7, is against initiation of penalty proceedings under section 271(1)(c) of the Act.

11. This ground is pre-mature at this stage, hence, does not require adjudication.

12. Ground no.8 being general in nature is dismissed.

13. In the result, assessee's appeal is partly allowed.

Order pronounced in the open Court on 11.09.2018

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 11.09.2018

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

By Order

(Sr. Private Secretary)
ITAT, Mumbai