

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

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No. 3148/Mum/2018
Assessment Year : 2010-11

M/s. Shreenox Synthetics, H.No. 548, Aasbibi, Kalyan Road, Khadi Machine Road, Bhiwandi, [PAN : ABFFS4088N]	Vs.	Income Tax Officer-1(4), KALYAN
(Appellant)		(Respondent)

Appellant By : Shri Vimal Punmiya, AR
Respondent By : Shri Vijay Kumar Soni, DR

Date of Hearing : 31-01-2019	Date of Pronouncement : 01-02-2019
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ORDER

This appeal is filed by the assessee and the same is directed against the order of the Commissioner of Income Tax(Appeals)-2, Thane, dated 28-02-2018 for the AY. 2010-11.

2. Although several grounds were raised by the assessee but at the time of hearing of this appeal, it was submitted by the learned AR of the assessee before the Bench that ground raised on merit may be decided and other grounds may be

rejected as not pressed. Accordingly, all grounds except Ground No. 6 are rejected as not pressed. Ground No. 6 is reproduced hereunder:

“6. The Ld. CIT(A) erred in confirming and treating Rs. 3,71,263/- being purchases made from M/s. Shreejee Commercial Corporation as bogus non-genuine expenditure and thereby erred in adding the same to the total income of the assessee under section 69C of the Income Tax Act, 1961”.

3. Regarding Ground No. 6 which is in respect of the addition made by the AO of Rs. 3,71,263/-, it was submitted by the Ld. AR of the assessee that similar issue was decided by the Tribunal in assessee's own case for the AY. 2011-12 in ITA No. 3973/Mum/2015, dt. 14-07-2016. A copy of the same was also submitted. He drew my attention to Para No. 6 of the said order of the Tribunal and pointed out that in this Para, it was noted by the Tribunal that GP disclosed by the assessee in the AY. 2009-10 was 4.73% and in AY. 2010-11, it was 3.72%, but there is increase of 33% in the sales amount during the AY. 2011-12 before the Tribunal in that case. He further pointed out that it was noted by the Tribunal that sales increased from Rs. 16.62 Crores to Rs. 21.83 Crores during the AY. 2011-12. Thereafter, he pointed out that it was held by the Tribunal that there was increase in NP margins

slightly. He further pointed out that in that year, the Tribunal held that GP rate should be adopted at 3.50% as against 3.44%, shown by the assessee. At this juncture, it was observed by the bench that in the present year, the turnover of assessee is Rs. 16.62 Crores as against Rs. 21.83 Crores in AY. 2011-12. The Bench pointed out that in AY. 2011-12, the Tribunal had accepted GP percentage of 3.50% and it is also held that there is fall in GP rate if the turnover goes up. The Bench observed that since the turnover is lesser in the present year as compared the turnover of Rs. 21.83 Crores in AY. 2011-12, the percentage of GP in the present year is required to be adopted at a higher figure as per this tribunal order as compared to 3.5% adopted in A. Y. 2011 - 12.

4. In reply, the Ld. AR of the assessee submitted that Bench may decide the percentage of GP to be adopted in the present year.

5. Ld. DR for the Revenue supported the order of the Ld. CIT(A).

6. I have considered the rival submissions. I find that as per the chart reproduced by Ld. CIT(A) at Pg. No. 16 of the impugned order, assessee was having a turnover of

Rs. 10.19 Crores in AY. 2008-09 and in that year, the assessee reported GP percentage at 5.20%. In AY. 2011-12, the turnover reported by the assessee is Rs. 21.83 Crores and assessee disclosed GP rate at 3.44% and the tribunal adopted GP rate of 3.50% in that year. Going by these facts and the basis adopted by the Tribunal in that year that when the turnover goes up, GP rate goes down slightly. Considering all these facts and on the basis of the Tribunal's order and the basis of the decision as discussed above, I feel it proper to adopt GP rate of 3.84% being average of GP rate declared by the assessee at 3.73% and GP rate of 3.95% after considering the addition made by the AO.

7. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 1st day of February, 2019

Sd/-
(A.K. GARODIA)
लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai; दिनांक/Dated : 1st February, 2019

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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai
4. आयकर आयुक्त / CIT, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
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आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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