

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.5180/Del./2018
Assessment Year 2010-2011

Shri Vipin Dhingra, NIT, Faridabad. PAN ABYPD8384K C/o. Shri RK Malhotra, Advocate, 5D/8A, Railway Road, NIT, Faridabad. PIN – 121001. Haryana.	vs.	The Income Tax Officer, Ward – 2 (5), Faridabad.
(Appellant)		(Respondent)

For Assessee :	Shri Anish Malhotra, Advocate.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	14.02.2019
Date of Pronouncement :	19.02.2019

ORDER

This appeal by assessee has been directed against the Order of the Ld. CIT(A), Faridabad, Dated 28th May 2018, for the assessment year 2010-11, challenging the addition of Rs,4,37,697/-,

2. Briefly the facts of the case are that assessee filed return of income on 25th September, 2010 on an income of Rs.2,85,690/-. The case was reopened under section 147 of the Income Tax Act on the reason that information was received from Investigation Wing that the assessee has made payment of Rs.43,76,971/- to M/s. Tyagi Machine Tools on account of accommodation entries provided by him to the assessee. The explanation of assessee was called for, in which, the assessee briefly explained that he has made purchase from M/s. Tyagi Machine Tools. The assessee is a scrap dealer and doing scrap trading work from the last so many years and have purchased goods from various parties as well as M/s. Tyagi Machine Tools, which was subjected to payment of VAT. The details are also declared in the VAT returns. The assessing officer, however, did not accept the explanation of assessee and issued show cause notice to the assessee. The assessing officer noted that assessee did not file written submission and his Counsel has replied that assessee had already given necessary reply. The assessing officer on the basis of the report of the Investigation Wing

noted that account of M/s. Tyagi Machine Tools was used for providing accommodation entry to assessee as one of the beneficiary of the same. Therefore, 10% out of the same was disallowed and addition was made of Rs.4,37,697/-. The Ld. CIT(A) reproduced the findings of the assessing officer and relying upon the Order of ITAT, Mumbai Bench in the case of Magnum Steels, dismissed the Appeal of assessee.

3. After considering the rival submissions, I am of the view that the matter requires reconsideration at the level of the Ld. CIT(A). The Learned Counsel for the Assessee referred to several documents in the paper book to show that assessee has entered into genuine transaction, on which, the authorities below have not adversely commented upon the same. The assessing officer accepted 90% of the purchases made by assessee as genuine. The Ld. CIT(A) instead of deciding the issue on merit by giving reasons for decision in the appellate order, merely reproduced part of the show cause notice of the assessing officer in the appellate order, considering it to be the reasons given in the assessment order. The Ld. CIT(A) did not discussed the facts

and material on record for the purpose of deciding the appeal and by following the order of Mumbai Bench in the case of Magnum Steel, dismissed the appeal of assessee. The course adopted by the Ld. CIT(A) could not be appreciated. The Ld. CIT(A), being the First Appellate Authority, shall have to pass the order on merits, giving reasons for decision in the appellate order. Therefore, the order of the Ld. CIT(A) cannot be sustained in law. I accordingly, set aside the order of the Ld. CIT(A) and restore the Appeal of assessee to his file with a direction to re-decide the appeal of assessee strictly on merits, by giving reasonable, sufficient opportunity of being heard to the assessee, before passing the appellate order.

4. In the result appeal of the Assessee allowed for statistical purposes

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 19th February, 2019.

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi