



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.3242/Mum./2018
(Assessment Year : 2011-12)

Vijay Metal Corporation
73, Habib Building
C.P. Tank Road
Mumbai 400 004
PAN – AABFV4225D

..... Appellant

v/s

Income Tax Officer
Ward-19(3)(5), Mumbai

..... Respondent

Assessee by : Shri Vimal Punmiya
Revenue by : Shri Vivek Anand Ojha

Date of Hearing – 05.03.2019

Date of Order – 20.03.2019

ORDER

Aforesaid appeal has been filed by the assessee challenging the order dated 1st February 202018, passed by the learned Commissioner (Appeals)-2, Mumbai, for the assessment year 2011-12.

2. On the instructions of the assessee, the learned Authorised Representative did not press grounds no.1, 2, 3 and 4. Accordingly, grounds no.1, 2, 3 and 4 are dismissed as not pressed.

3. In ground no.5, the assessee has challenged the addition of ₹ 10,79,553, made on account of non-genuine purchases.

4. Brief facts are, the assessee, a partnership firm, is engaged in the business of trading in ferrous and non-ferrous metals. For the impugned assessment year, the assessee filed its return of income on 14th September 2011, declaring income of ₹ 91,350. The return of income filed by the assessee was initially 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, and the Sales Tax Department, Government of Maharashtra that purchases worth ₹ 86,36,422, claimed to have been made from four parties are not genuine, as such parties have been identified by the Sales Tax Department as hawala operators providing accommodation bills, the Assessing Officer re-opened the assessment under section 147 of the Act. In the course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of the purchases made. As observed by the Assessing Officer, except furnishing invoices, ledger copies, payment details, the assessee could not furnish transportation details, lorry receipts, delivery challans, etc., to prove the genuineness of purchases. Further, the Assessing Officer's effort to independently verify the purchases was not fruitful as the notices issued under section 133(6) of the Act

to the selling dealers returned back un-served. Even, despite the request of the Assessing Officer, the assessee could not produce a single selling dealer. Therefore, the Assessing Officer ultimately concluded that purchases claimed to have been made by the assessee from the concerned parties are not genuine. Accordingly, he rejected the books of account of the assessee under section 145(3) of the Act. However, since the assessee furnished the stock statement with quantitative details, the Assessing Officer was of the view that the assessee had purchased the goods from unknown sources to suppress profit. Therefore, instead of adding the entire non-genuine purchases to the income of the assessee, the Assessing Officer estimated the profit at 12.5% on the non-genuine purchases and added an amount of ₹ 10,79,553, to the income of the assessee.

5. The assessee challenged the aforesaid addition before the learned Commissioner (Appeals) without any success.

6. The learned Authorised Representative submitted, during the assessment proceedings, the assessee had furnished various evidences to prove the genuineness of the purchases. He submitted, payments were made through cheques which prove existence of the selling dealers. He submitted, sales are also not doubted and the assessee has paid VAT to State Government. He submitted, in these circumstances, no addition should have been made. Further, he

submitted, in assessee's own case for assessment year 2011-12, identical addition made by the Assessing Officer was reduced by the Tribunal to 10% of the non-genuine purchases.

7. The learned Departmental Representative relied upon the observations of the Assessing Officer and the learned Commissioner (Appeals).

8. I have considered rival submissions and perused material on record. From the facts and material on record, it is evident that the assessee was unable to prove the genuineness of purchases through credible evidence. Therefore, the Assessing Officer was justified in treating the purchases as non-genuine and rejecting the books of account. However, the assessee has maintained stock register and furnished the quantitative details of purchases and sales. For this reason alone, the Assessing Officer has not added the entire purchases but has restricted it to the profit element estimated at 12.5%. Notably, while deciding the issue of identical nature in assessee's own case for assessment year 2010-11, the Tribunal in ITA no.959/Mum./2018, dated 26th April 2018, has restricted the addition to 10% of the non-genuine purchases. Facts being more or less identical, respectfully following the aforesaid decision of the Tribunal, I direct the Assessing Officer to restrict the addition to 10% of the non-genuine purchases. Ground is partly allowed.

9. The learned Authorised Representative has not advanced any specific argument in respect of grounds no.6 and 7. In any case of the matter, the issues raised in these grounds being consequential and premature at this stage, do not require adjudication.

10. Ground no.8, being general in nature is dismissed.

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

Order pronounced in the open Court on 20.03.2019

SD/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 20.03.2019

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

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai