

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

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3316/MUM/2018
Assessment Year: 2009-10**

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**ITA No. 3317/MUM/2018
Assessment Year: 2010-11**

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**ITA No. 3318/MUM/2018
Assessment Year: 2011-12**

&

**ITA No. 3319/MUM/2018
Assessment Year: 2012-13**

Kishore Chunilal Mehta,
109, Patel Building, Shop
No. 2, ArdeshirDady Street,
X Lane, C.P. Tank Road,
Mumbai-400004.

**PAN No. AAAPM9939L
Appellant**

Vs. Income Tax Officer-
19(2)(2), MatruMandir,
2nd floor, Nana
ChowkTardeo, Mumbai-
400007

Respondent

Assessee by : Mr. M.S. Mathuria, AR
Revenue by : Mr. Chaitanya Anjaria, DR

Date of Hearing : 16/05/2019
Date of pronouncement: 24/05/2019

ORDER

PER N.K. PRADHAN, AM

The captioned appeals filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-2, Mumbai [in

short 'CIT(A)'] and arise out of the assessment completed u/s 143 r.w.s. 147 of the Income Tax Act 1961 (the 'Act'). As common issues are involved, we are proceeding to dispose them off through a consolidated order for the sake of convenience. Facts being identical, we begin with the assessment year (AY) 2009-10.

2. The grounds of appeal filed by the assessee read as under:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-2, Mumbai erred in confirming the addition made by the Assessing Officer of Rs.9,40,335/- being 12.5% profit element on treating the genuine purchases of Rs.75,22,686/- as non-genuine purchases out of total purchases of Rs.6,59,45,889/- considering the purchases as bogus from the parties of which information has been received from Sales Tax Department and the said information has been forwarded by the DCIT(Inv.), Wing, Mumbai to the Assessing Officer.

Provisions of the Act ought to have been properly construed and regard being had to facts of the case no such additions to be made. Reasons assigned by him are wrong and insufficient to justify the additions.

2. The order made u/s 143(3) r.w.s. 147 of the Act by the Ld. AO is bad-in-law, ultra-virus and without appreciating the facts and law in their proper perspective and is liable to be annulled.

3. Briefly stated, the facts are that the assessee filed his return of income for the AY 2009-10 on 28.09.2009 declaring total income of Rs.6,03,500/-, which was processed u/s 143(1) of the Act accepting the returned income. Thereafter, the AO completed the assessment u/s 143(3) on 16.11.2011 determining the total income at Rs.6,90,720/-.

Subsequently, the AO received information from the Director General of Income Tax (Inv), Mumbai that the assessee had obtained accommodation entries from entry providers who have been issuing bogus sales/purchase bills without physical delivery of the materials. The AO noted that the assessee had obtained accommodation entries amounting to Rs.75,22,686/- from 12 parties during the year under consideration. Accordingly, the AO issued notice u/s 148 on 14.03.2014. During the course of re-assessment proceedings, in response to a query raised by the AO, the AR of the assessee filed (i) purchase invoice of the specified party, (ii) copies of bank statements evidencing payments made through banking channels by issuing account payee cheques in respect of all the parties, highlighting the relevant entries, (iii) chart showing the details of purchases of the alleged parties and (iv) quantitative tally in respect of the entire purchases from the above named parties and the corresponding sales.

During the course of re-assessment proceedings, the AO issued notice u/s 133(6) to the said parties. However, the notices were returned back by the postal authorities with the remark 'not found'. The AO asked the assessee to produce the said parties before him for cross-examination. However, the assessee failed to do so. Also the AO noted that the assessee could not file documents such as delivery challans, transport receipts, octroi receipts, excise gate pass, goods inward register. Therefore, the AO came to a finding that the purchases of Rs.75,22,686/- made from the said parties by the assessee were not genuine. However, the AO was of the view that the intention of indulging

in such activities by the AO was to suppress the true profits and reduce the tax liability. Therefore, the AO relying on the decision in *CIT v. Simit P. Sheth* (2013) 356 ITR 451 (Guj) estimated the profit @ 12.5% on the disputed purchases of Rs.75,22,686/- and brought Rs.9,40,335/- to tax.

4. In appeal, the Ld. CIT(A) agreed with the reasons given by the AO and confirmed the disallowance of Rs.9,40,335/-.

5. Before us, the Ld. counsel of the assessee submits that in response to the query raised by the AO the assessee had filed the details as mentioned at para 6 of the assessment order dated 25.02.2015. We have mentioned the details filed by the assessee at para 3 hereinabove. Further, it is submitted by the Ld. counsel that merely because the notices issued by the AO u/s 133(6) were returned by the postal authorities with the remark 'not found' would not be ground to estimate profit @ 12.5% on the purchases of Rs.75,22,686/-. Finally, it is submitted that considering the nature of business of the assessee being trading in ferrous and non-ferrous metals, the estimation of profit @ 12.5% on the purchases of Rs.75,22,686/- is on a higher side.

On the other hand, the Ld. DR submits that the AO has rightly estimated the profit as the notices sent u/s 133(6) by the AO were returned back by the postal authorities with the remark 'not found' and also because the assessee could not file documents such as delivery challans, transport receipts, octroi receipts, receipts of weighbridge, excise gate pass, goods inward register etc.

6. We have heard the rival submissions and perused the relevant materials on record. In the instant case, as per the investigation done by the Sales Tax Department, Government of Maharashtra, the assessee had obtained accommodation entries from dealers who had issued bogus purchase/sale bills without physical delivery of material. Thus the AO has rightly reopened the assessment.

The letters issued by the AO u/s 133(6) to the parties were returned back by the postal authorities with the remark 'not found'. However, the assessee could file before the AO some relevant documents like purchase invoice of the specified parties; copies of bank statements evidencing payments made through banking channels by issuing account payee cheques ; quantitative tally in respect of entire purchases from the above parties and the corresponding sales.

The nature of business of the assessee is trading in ferrous and non-ferrous metals. Having considered the facts and circumstances of the case, we direct the AO to restrict the disallowance to 5% of the disputed purchases of Rs.75,22,686/- in the impugned assessment year and bring the resultant amount to tax.

Facts being identical, our decision for the AY 2009-10 applies *mutatis mutandis* to AYs 2010-11, 2011-12 and 2012-13.

7. In the result, the appeals are partly allowed.

Order pronounced in the open Court 24/05/2019.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 24/05/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai