



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.579, 580 & 581/Jp./2016
(Assessment Year : 2009-10, 2010-11 & 2011-12)

Income Tax Officer
Ward-6(4), Mumbai

..... Appellant

v/s

Shri Sanjay Jain, Proprietor
M/s. Steel Impex, 1st Floor
231/235, Sant Sena Maharaja Marg
2nd Kumbharwada Lane
Nr. Gopal Deval, Mumbai 400 004
PAN - ADJPJ5621J

..... Respondent

C.O. no.24, 25 & 26/Jp./2016
(Arising out of ITA no.579, 580 & 581/Jp./2016)
(Assessment Year : 2009-10, 2010-11 & 2011-12)

Shri Sanjay Jain, Proprietor
M/s. Steel Impex, 1st Floor
231/235, Sant Sena Maharaja Marg
2nd Kumbharwada Lane
Nr. Gopal Deval, Mumbai 400 004
PAN - ADJPJ5621J

..... Appellant

v/s

Income Tax Officer
Ward-6(4), Mumbai

..... Respondent

Revenue by : Shri Chaudhary Arunkumar Singh
Assessee by : None

Date of Hearing - 07.08.2019

Date of Order - 23.08.2019

ORDER**PER BENCH**

Aforesaid appeals by the Revenue and cross objections by the assessee arise out of three separate orders passed by the learned Commissioner of Income Tax (Appeals)-2, Jaipur, pertaining to the assessment years 2009-10, 2010-11 and 2011-12.

2. Since all these appeals relate to the same assessee involving common issues arising out of identical set of facts and circumstances, therefore, as a matter of convenience, these appeals were heard together and are being disposed of by way of this consolidated order.

3. Brief facts, which are more or less common in these appeals are, the assessee is an individual. As stated by the Assessing Officer, the assessee is engaged in the business of trading in ferrous and non-ferrous metals through his proprietary concern Steel Impex India. For the assessment years under dispute, the assessee filed its return of income originally in the regular course and the returns of income filed were processed under section 143(1) of the Act. Subsequently, on the basis of information received from the Sales Tax Department, Mumbai, Government of Maharashtra, that the assessee is a beneficiary of accommodation entries provided by various parties/entities by way of bogus purchase bills, re-opened the assessment under section 147 of

the Income Tax Act, 1961 (for short "*the Act*"). In the course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases. However, as alleged by the Assessing Officer, the assessee could not prove the genuineness of purchases by furnishing evidence to show actual delivery of goods. However, the assessee did produce the books of account along with the bank account copies, etc. After verifying the material on record, the Assessing Officer was not convinced with the explanation of the assessee. Accordingly, holding that the books of account maintained by the assessee are unreliable due to un-verifiability of purchases, the Assessing Officer rejected the books of account and proceeded to determine the income of the assessee to the best of his judgment. Accordingly, he disallowed the entire purchases, alleged to be bogus, in the assessment years under dispute and added back to the income of the assessee. The additions made in different assessment years are as under:-

<i>A.Y. 2009-10</i>	<i>₹ 36,98,347</i>
<i>A.Y. 2010-11</i>	<i>₹ 52,18,708</i>
<i>A.Y. 2011-12</i>	<i>₹ 39,79,021</i>

4. Being aggrieved with the aforesaid additions, the assessee preferred appeals before the first appellate authority.

5. The learned Commissioner (Appeals), after considering the submissions of the assessee in the context of facts and material on record, though agreed with the Assessing Officer that the assessee was unable to prove the genuineness of purchases, however, he held that since the sales effected by the assessee were not doubted or disturbed by the Assessing Officer, therefore, the entire purchases cannot be added back to the income of the assessee. While coming to such conclusion, he relied upon certain judicial precedents. Therefore, though, he upheld the decision of the Assessing Officer in rejecting the books of account of the assessee, however, he directed the Assessing Officer to restrict the addition to the profit element embedded in the non-genuine purchases estimated @ 15%. Thus, due to the aforesaid direction of the learned Commissioner (Appeals), the addition in different assessment years was reduced to the following amounts: –

<i>A.Y. 2009-10</i>	<i>₹5,54,752</i>
<i>A.Y. 2010-11</i>	<i>₹7,82,806</i>
<i>A.Y. 2011-12</i>	<i>₹5,96,853</i>

6. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case in spite of notice of hearing issued through registered post. Therefore, we proceed to dispose of the appeal ex-parte qua the assessee after hearing the

learned Departmental Representative and on the basis of material available on record.

7. Heard the learned Departmental Representative and perused the material on record. It is the submission of the learned Departmental Representative that once the purchases made by the assessee were found to be bogus, the entire purchase is required to be added back to the income of the assessee. We are not convinced with the aforesaid submission of the learned Departmental Representative. As rightly observed by learned Commissioner (Appeals), though, the Assessing Officer has disputed the genuineness of purchases effected by the assessee from certain parties, however, he has not disputed or disbelieve the sales turnover shown by the assessee. Therefore, it has to be assumed that in absence of the purchases, the assessee could not have effected the corresponding sales. Thus, the dispute remains only with regard to the source from which the assessee effected the disputed purchases. It is evident, the assessee has not brought on record any clinching evidence to establish that the purchases were made from the declared source, which, in other words means that the assessee must have purchased the goods from grey market and has obtained bogus purchase bills to regularize such purchases. In such fact situation, the entire purchases made by the assessee cannot be added back to the income, but, only the profit element embedded in

such purchases can be treated as income of the assessee. This view has also been taken by the Tribunal and the High Court while deciding similar nature of dispute. That being the case, we do not find any infirmity in the order of learned Commissioner (Appeals) in restricting the addition to the profit element embedded in the non-genuine purchases which is estimated @ 15%. The assessee on his part has neither brought any material before us to prove the genuineness of purchases nor has demonstrated that the estimation of profit by the learned Commissioner (Appeals) is unreasonable. Therefore, in absence of any contrary evidence to demonstrate that the estimation made by the learned Commissioner (Appeals) @ 15% is unreasonable, we uphold the decision of learned Commissioner (Appeals) on the issue.

8. As regards the grounds raised in the cross objection regarding re-opening of assessment, rejection of books of account and lack of opportunity to cross examine the witness, we are unable to find any merit in such grounds. Undisputedly, the returns of income filed by the assessee were only processed under section 143(1) of the Act and not subjected to scrutiny. Subsequently, tangible information came to the possession of the Assessing Officer revealing escapement of income on account of accommodation entries obtained by the assessee from hawala operators. In these circumstances, the Assessing Officer has

validly exercised his jurisdiction in re-opening of assessment under section 147 of the Act. As regards rejection of books of account, we are of the view that when the assessee failed to prove the genuineness of purchases, the Assessing Officer was justified in rejecting the books of account. Insofar as issue of lack of opportunity in course of assessment proceedings, we do not find merit in such contention of the assessee. In our view, in course of assessment proceedings and also before learned Commissioner (Appeals), the assessee was given full opportunity to represent his case. It is a fact on record that the assessee despite being given sufficient opportunity has not been able to prove the genuineness of purchases by furnishing cogent material/evidences. In such circumstances, assessee's plea of lack of opportunity cannot be entertained. Accordingly, all the grounds raised in the appeal as well as the cross objections are dismissed.

9. In the result, Revenue's appeals and assessee's cross objections are dismissed.

Order pronounced in the open Court on 23.08.2019

**Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER**

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 23.06.2019

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

Assistant Registrar
ITAT, Mumbai