



ITA No.1397/Mum/2018

AY 2011-12

Shri Lalit N. Shah

आयकर अपीलीय अधिकरण “एक-सदस्य मजमल” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

मजनीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.1397/Mum/2018

(निर्धारण वर्ष / Assessment Year:2011-12)

Shri Lalit N. Shah Prop. Of M/s. Shah Impex 82/84, Kika Street, 2 nd Floor Gulalwadi, Mumbai-400 004.	बनाम/ Vs.	Income tax Officer-19(2)(1) Room No.218, Matru Mandir Tardeo Road Mumbai-400 077.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ACDPS-9498-P		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Ashutosh Rajhans-Ld.DR
Assessee by	:	Shri Neelkanth Khandelal-Ld.AR

सुनवाई की तारीख/ Date of Hearing	:	09/09/2019
घोषणा की तारीख / Date of Pronouncement	:	09/09/2019

आदेश / O R D E R

Per Bench: -

1.1 Aforesaid appeal by assessee for Assessment Year [AY] 2011-12 is a recalled matter since the appeal was originally dismissed by SMC bench of Tribunal *ex-parte* vide order dated 18/10/2018. However, upon assessee’s application, the order has been recalled vide MA No.252/Mum/2019 order



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dated 17/07/2019. Accordingly, the appeal has come up for fresh hearing before this coordinate bench.

1.2 The appeal contests the order of Ld. Commissioner of Income Tax (Appeals)-53, Mumbai [CIT(A)], Appeal No. CIT(A)-53/IT-185/ITO-19(2)(1)/2017-18 order dated 22/12/2017 on following grounds of appeal: -

The ground or grounds of appeal are without prejudice to one another.

1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the action of the AO in re-opening of the assessment u/s. 147 of the Income Tax Act, 1961 as the prescribed conditions therein are not satisfied.

2.a) On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the addition of Rs.11,62,434/- made by the AO to the income of the Appellant on account of possible profit element @ 12.5% embedded in purchases made through alleged non-genuine parties on the basis of information of the Sales Tax Department about suspicious dealers.

b) The Id. CIT(A) failed to appreciate that :-

- i) all the purchases are genuine beyond doubt and supported by sufficient materials;*
- ii) all the goods purchased from these parties have been backed by corresponding sales which are accepted to be genuine;*
- iii) the gross profit ratio shown by the Appellant is quite reasonable;*
- iv) nothing has been brought on record by the AO that money has been exchanged in the hands in lieu of payment made for these purchases by account payee cheque; and*
- v) the AO had neither provided copy of materials and statements relied upon by him nor allowed any opportunity to the Appellant to cross examine those parties who have been alleged to have provided the accommodation entries of such purchases.*

c) In reaching to the conclusion and confirming such addition(subject to certain relief) made by the AO, the Id. CIT(A) omitted to consider relevant factors, considerations, principles and evidences while he was overwhelmed, influenced and prejudiced by irrelevant considerations and factors.

d) Without prejudice, the rate or percentage of profit element embedded in such purchases as confirmed by the CIT(A) is excessive and unreasonable on the facts of the case.

3. The Id. CIT(A) erred in holding that the ground raised disputing initiation of penalty proceedings u/s.271(l)(c) is premature. The Appellant denies his liability for such penalty.

2.1 Facts in brief are that the assessee being resident individual stated to be engaged as trader of metals, was assessed for impugned AY u/s. 143(3)



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r.w.s. 147 on 29/02/2016 wherein the income of the assessee was determined at Rs.17.31 Lacs after sole addition of *alleged bogus purchases* for Rs.11.62 Lacs as against returned income of Rs.5.68 Lacs filed by the assessee on 27/09/2011 which was processed u/s.143(1).

2.2 Pursuant to receipt of certain information from investigation wing / Sales tax Department, Govt. of Maharashtra, it transpired that the assessee stood beneficiary of alleged bogus purchases to the tune of Rs.92.99 Lacs from 4 entities, the details of which have already been tabulated at para-5.1 of the quantum assessment order. Accordingly, as per due process of law, re-assessment proceedings were initiated against the assessee u/s 147 by issuance of notice u/s 148 on 07/11/2014. The statutory notices u/s 143(2) & 142(1) were issued in due course wherein the assessee was directed to substantiate the purchase transactions. The assessee was supplied with recorded reasons for reopening the case.

2.3 Although, the assessee defended the purchases by submitting details of sales / purchases, bank statements etc., however, notices issued u/s 133(6) to all the suppliers remained unserved as well as un-responded to. The assessee failed to produce any of the suppliers to confirm the stated transactions which led the Ld. AO to believe that the assessee remained unsuccessful in discharging the onus casted upon him, in this regard. Consequently, the assessee was saddled with an estimated addition @12.5% amounting to Rs.11.62 Lacs in the quantum assessment order. The learned first appellate authority, *inter-alia*, relying upon the decision of Hon'ble Gujarat High Court rendered in **CIT V/s Simit P. Sheth [356 ITR**



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451] confirmed the additions. Aggrieved, the assessee is in further appeal before us. We have heard and considered the arguments put forth by respective representatives before us.

3. So far as the legal grounds are concerned, we find that the original return of income was processed u/s 143(1) and the only requirement under law to initiate reassessment proceedings was that learned AO had reasons to believe that certain income escaped assessment in the hands of the assessee. The Ld. AO was clinched with tangible material in the shape of information from investigation wing / Sales Tax Department which, *prima-facie*, suggested possible escapement of income in the hands of the assessee. Nothing more was required at this stage. Therefore, the reassessment proceedings were perfectly valid. Nothing on record support the legal grounds raised by assessee before us. Therefore, these grounds stand dismissed.

4. So far as the estimation of additions are concerned, we are of the considered opinion there could be no sale without actual purchase of material keeping in view the assessee's nature of business. The assessee was in possession of primary purchase documents and the payments to the supplier was through banking channels. The sales turnover reflected by the assessee was not disputed / disturbed by Ld.AO. However, at the same time, the assessee miserably failed to substantiate the purchases during assessment proceedings. Notices issued u/s 133(6) remained un-responded to in all the cases. Under such circumstances, the additions which could be sustained, was to account for profit element embedded in



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these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against such bogus purchases, which Ld. first appellate authority has rightly done. However, keeping in view the fact that the assessee was dealing in a low-margin item like iron & steel which attracts lower rate of tax, the estimation made by Ld. CIT(A) would be slightly on the higher side. We modify the same to 5% of suspicious purchases which comes to Rs.4,64,973/-. The Ld. AO is directed to recompute the income in terms of our order. The grounds, on merits, stands partly allowed.

5. Resultantly, the appeal stands partly allowed.

Order pronounced in the open court on 09th September, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 09/09/2019

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File



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आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**