



Shri Dineshkumar C. Doshi
Assessment Years 2010-11 & 2011-12

आयकर अपीलीय अधिकरण “एक-सदस्य मजलम” 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.1729/Mum/2018
(निर्धारण वर्ष / Assessment Year:2010-11)

&

आयकर अपील सं./ I.T.A. No.1730/Mum/2018
(निर्धारण वर्ष / Assessment Year:2011-12)

Shri Dineshkumar C. Doshi Prop. Jagruti Metal Industries Office No.305, 3 rd Floor 13/12, Virchand Umershwai B-3 rd Panjrapole Lane, C.P. Tank, Mumbai 400 004.	बनाम/ Vs.	Income tax Officer-19(1)(4) Room No.222, 2 nd Floor, Matru Mandir Tardeo Road Mumbai-400 007.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AHMPD-4114-D		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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

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

आदेश / ORDER

Per Bench: -

1.1 Aforesaid appeals by assessee for Assessment Years [AY] 2010-11 & 2011-12 are recalled matter since the appeals were originally dismissed by



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SMC bench of Tribunal *ex-parte* vide order dated 11/10/2018. However, upon assessee's application, the order has been recalled vide MA Nos.253-254/Mum/2019 order dated 17/07/2019. Accordingly, the appeals have come up for fresh hearing before this coordinate bench.

1.2 Since facts are substantially the same, both the appeals are being disposed-off by way of this common order for the sake of convenience and brevity. The grounds raised for AY 2010-11 read as under: -

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

1.a) *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in upholding the action of the AO in re-opening of the assessment u/s. 147 of the Income Tax Act, 1961.*

b) *The Id. CIT(A) erred in holding that the Authorised Representative of the Appellant has not pressed the Ground No.1 and the Ground No.3 raised against re-opening of assessment and rejection of books of accounts u/s. 145(3) respectively.*

2.a) *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the addition to the extent of 6.5% of alleged bogus purchases as against such addition @ 12.5% made by the AO to the income of the Appellant on account of possible profit element embedded in purchases made through alleged non-genuine parties on the basis of information of the Sales Tax Department about suspicious dealers and further erred in confirming the rejecting of books u/s. 145(3) made by the AO.*

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 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.*



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3. *The Id. CIT(A) erred in holding that levy of interest u/s.234B and 234C of the Income Tax Act, 1961 is mandatory. The Appellant denies his liability for such interest.*
4. *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 under proprietorship concern namely M/s Jagruti Metal Industries, was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 30/12/2015 wherein the income of the assessee was determined at Rs.11.89 Lacs after sole addition of *alleged bogus purchases* for Rs.8.25 Lacs as against returned income of Rs.3.64 Lacs filed by the assessee on 21/09/2010 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.66.05 Lacs from 8 entities, the details of which have already been tabulated at para-2 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 05/09/2014. 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, 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 supplier to confirm the stated transactions which led the Ld. AO to believe that the assessee



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remained unsuccessful in discharging the onus casted upon him, in this regard. Consequently, the books were rejected u/s 145(3) and the assessee was saddled with an estimated addition @12.5% amounting to Rs.8.25 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 451]** restricted the addition to 6.5% and deleted the balance additions. Aggrieved, the assessee is in further appeal before us. It appears that the revenue is not in further appeal. We have heard and considered the arguments raised 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



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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 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.3,30,261/-. The Ld. AO is directed to recompute the income in terms of our order. The grounds, on merits, stands partly allowed. The appeal stands partly allowed.

5. Facts are pari-materia the same in AY 2011-12 wherein the assessee was saddled with estimated addition of 12.5% against *alleged bogus purchases* in an assessment framed u/s 143(3) r.w.s. 147 on 30/12/2015. The first appellate authority restricted the additions to 6.5%. Since facts are identical, our observation, conclusion as well as adjudication as for AY 2010-11 shall *mutatis mutandis* apply to this year also. Accordingly, the impugned additions stand restricted to 5% of *alleged bogus purchases*. The



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same comes to Rs.3,09,952/-. The impugned order stand modified to that extent. The legal grounds stand rejected whereas the grounds, on merits, stands partly allowed. The appeal stands partly allowed.

Conclusion

6. Both the appeals stand 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. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

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