



Jawataram S. Dewasi
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.5087/Mum/2018
(निर्धारण वर्ष / Assessment Year:2010-11)

&

आयकर अपील सं./ I.T.A. No.5137/Mum/2018
(निर्धारण वर्ष / Assessment Year:2011-12)

Shri Jawataram S. Dewasi M/s. Supermax Metal, Room No.4 92, Krishna Bhavan 2 nd Kumbharwada, Sant Sena Maharaj Marg Mumbai-400 004.	बनाम/ Vs.	Income Tax Officer-19(2)(1) Tardeo Mumbai-400 007.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AHZPD-1052-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Akhtar H. Ansari-Ld.DR
Assessee by	:	Assessee-in-Person

सुनवाई की तारीख/ Date of Hearing	:	17/09/2019
घोषणा की तारीख / Date of Pronouncement	:	17/09/2019

आदेश / O R D E R

Per Bench: -

1. Aforesaid appeals by assessee for Assessment Years [in short referred to as AY] 2010-11 and 2011-12 contest common order of Ld.



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Commissioner of Income-Tax (Appeals)-30, Mumbai, [in short referred to as CIT(A)], *Appeal No. CIT(A)-30/19(2)(1)/134&1196 /2016-17 dated 08/08/2018.* The grounds raised in AY 2010-11 reads as under: -

- (1) The order of Commissioner of Income Tax Appeals is bad and unjustified.
- (2) The Ld. Commissioner of Income Tax in Confirmation the Addition of Rs.1174922/- which is bad in Law and unjustified.
- (3) The Ld. Commissioner of Income Tax had erred in Law in Confirming the Charge of Interest under Section 234 A, 234 B, 234 C, which is bad in Law.
- (4) The Learned Commissioner of Income Tax has erred in Law in Confirming the initiation Penalty Proceeding under Section 271(1)(c) of The Income tax 1961.”

We have heard and considered the arguments advanced by both the sides.

2.1 Facts for AY 2010-11, in brief, are that the assessee being resident individual stated to be engaged in trading of metals under proprietorship concern namely M/s Supermax Metal Industries, was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 17/03/2016 wherein the income of the assessee was determined at Rs.16.03 Lacs after sole addition of *alleged bogus purchases* for Rs.11.74 Lacs as against returned income of Rs.4.28 Lacs filed by the assessee on 10/09/2010 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.93.99 Lacs from 16 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 05/11/2014. The statutory notices u/s



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143(2) & 142(1) were issued in due course wherein the assessee was directed to substantiate the purchase transactions.

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 substantiate delivery of material and also 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 additions were made against these purchases on estimated basis @12.5%. The stand of Ld. AO, upon confirmation by first appellate authority, is under challenge before us.

3. 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 i.e. trading. The assessee was in possession of primary purchase documents and the payments to the supplier was through banking channels. 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. The assessee failed to prove the delivery of material. 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 learned first appellate authority has rightly done so. However, keeping in view the fact that the assessee was



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dealing in low margin item like iron & steel, we reduce the estimation to 5% of alleged bogus purchases of Rs.93,99,405/- which comes to Rs.4,69,970/-. The impugned order stand modified to that extent. The learned AO is directed to re-compute the income of the assessee in terms of our above order. The appeal stands partly allowed. The grounds relating to interest & penalty would not require any adjudication.

4. Facts are pari-materia the same in AY 2011-12 wherein the assessee was saddled with additions of Rs.12.91 Lacs on account of *alleged bogus purchases* in an assessment framed u/s 143(3) r.w.s. 147 on 07/12/2016. The Ld. CIT(A) confirmed the same. The impugned order is common order for both the years. Hence, our observation, conclusion as well as adjudication as for AY 2010-11 shall *mutatis mutandis* apply to this year also. The additions stand confirmed to the extent of 5% of alleged bogus purchases of Rs.1,03,32,713/- which comes to Rs.5,16,635/-. The balance additions stand deleted. Resultantly, the appeal stands partly allowed.

5. Both the appeals stand partly allowed.

Order pronounced in the open court on 17th September, 2019.

Sd/-
(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 17/09/2019
Sr.PS:-Jaisy Varghese



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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.**