

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA NO.5936/MUM/2018(A.Y. 2009-10)

ITA NO.5937/MUM/2018(A.Y. 2011-12)

Shantidevi C. Jain Prop of
M/s. Antriksh Metal Corporation,
312, 13/12, 3rd Panjarpole Lane,
C.P.Tank, PO Box.3534,
Mumbai 400 004
PAN:AAJPI 7081K

..... Appellant

Vs.

Income tax Officer 17(3)(3),
Room No.123, 1st Floor,
Aaykar Bhavan, M.K.Road, .
Mumbai 400 020

..... Respondent

Appellant by : Shri Ashok Mehta
Respondent by : Shri Ram Tiwari

Date of hearing : 18/09/2019

Date of pronouncement : 30/10/2019

ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-28,(in short 'the CIT(A)), Mumbai dated 02/07/2018 common for the assessment year 2009-10 and 2011-12. Since the facts giving rise to these appeals are similar and both the appeals are directed against the single order of CIT(A) for two different assessment years, these appeals are taken up together for adjudication and disposed of by this composite order.

2. The brief facts emanating from the records are; the assessee is engaged in trading of ferrous and non-ferrous metals. On the basis of information received from Sales Tax Department, Maharashtra, assessment for assessment year 2009-10 and 2011-12 were reopened. In re-assessment proceedings, the Assessing Officer held that the assessee has indulged in bogus purchases in assessment year 2009-10 from following parties:-

S.No.	Hawala Operator	Amount (In Rs.)
1.	Dhruv Sales Corporation	95,832
2.	A.P.Enterprises	9,82,248
3.	Vidhi and Vrushti Trade Pvt. Ltd.	39,12,480
4.	Kank Guru Tubes and Metals Pvt. Ltd.	13,67,688
5.	New Era Enterprises	19,01,974

The Assessing Officer rejected books of accounts and the G.P declared by the assessee. The Assessing Officer estimated G.P at 12.5% on alleged bogus purchases resulting in addition of Rs.11,33,626/-.

3. Similarly, in assessment year 2011-1, the Assessing Officer held that the purchases made by the assessee from following parties are bogus and estimated G.P @ 12.5% of such bogus purchases after rejecting books of accounts of the assessee.

S.No.	Hawala Operator	Amount (In Rs.)
1.	Harshil Ferromet Pvt. Ltd.	45,36,387
2.	Hans Enterprises	3,58,188
3.	Bostam Enterprises	8,42,365
4.	Stelco Steel Industries	1,19,012
5.	Rolex Trading Co.	2,68,372

6.	Gold Star Trading Co.	2,45,012
7.	Priya Steel Corpn.	7,50,214
8.	Sagar Enterprises	7,74,980
9.	Mukta Steel & Company	12,32,339
	Total	91,26,869

4. Aggrieved against the assessment orders passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act') for the assessment years 2009-10 and 2011-12, the assessee filed appeals before the CIT(A). The CIT(A) rejected the contentions of the assessee and upheld the addition made by Assessing Officer. Now, the assessee is in second appeal before the Tribunal, assailing ;

(i) the addition made on account of bogus purchases; and

(ii) rejection of books of account u/s 145(3) of the Act.

5. Shri Ashok Mehta appearing on behalf of the assessee submitted that the assessee had declared G.P of 6.9% in assessment year 2009-10. The G.P estimated by the Assessing Officer, at 12.5% is very much on the higher side.

5.1 The Id. Authorized Representative for the assessee further contended that Assessing Officer while making addition on account of bogus purchases have included the name of some of the parties from which assessee had never made any purchases. This fact was brought to the notice of Assessing Officer as well as CIT(A), however, the authorities below rejected the contentions of the assessee without examining the facts and documents on record. The Id. Authorized Representative for the

assessee further submitted that during assessment proceedings for assessment year 2011-12, the assessee had furnished various documents viz. balance sheet, profit and loss account, audit report, purchase registers, bank registers, purchase and sale invoices along with LRs, etc. The Assessing Officer simply ignored the same and made the addition by estimating G.P at 12.5%. The Id. Authorized Representative for the assessee submitted that both the appeals may be remitted back to the Assessing Officer to re-examine the issue of bogus purchases in the light of Hon'ble Bombay High Court decision in the case of PCIT -17 vs. M/s. Mohammad Haji Adam & Co. in Income Tax Appeal No.1004 of 2016 decided on 11/02/2019.

6. On the other hand, Shri Ram Tiwari representing the Department vehemently defended the impugned orders and prayed for dismissing appeals of the assessee. The Id. Departmental Representative submitted that since the assessee had failed to prove genuineness of the purchases and the parties, the Assessing Officer has rightly estimated G.P at 12.5% of such bogus purchases.

7. We have heard the submissions made by the representatives of rival sides and have perused the orders of authorities below. The assessee is in appeal against estimation of G.P at 12.5% on alleged Bogues purchases by the authorities below. It is an undisputed fact that sales declared by the assessee in both the impugned assessment years have not been disputed by the Revenue. Therefore, the addition can only be made on account of undisclosed profits on alleged bogus purchases. However, the G.P rate should be estimated on some rational basis. Taking

into consideration entirety of facts and the prayer of the assessee, we deem it appropriate to restore both the appeals back to the file of Assessing Officer, with a direction to recompute G.P in the light of judgment rendered in the case of PCIT -17 vs. M/s. Mohammad Haji Adam & Co. (supra).

8. In the result, both the appeals by the assessee are allowed for statistical purpose.

Order pronounced in the open court on Wednesday the 30th day of October, 2019.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 30/10/2019
Vm, Sr. PS(O/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,

(Dy./Asstt. Registrar)
ITAT, Mumbai