



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

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.2146 & 2150/Mum./2016
(Assessment Year : 2012-13 & 2007-08)

Shri Ajay Gupta
301-A, Mithila Apartment
J.B. Nagar, Andheri (East)
Mumbai 400 059
PAN - AACPG8928R

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Central Circle-43, Mumbai

..... Respondent

ITA no.1824, 1825 & 1826/Mum./2016
(Assessment Year : 2006-07, 2007-08 & 2009-10)

Dy. Commissioner of Income Tax
Central Circle-7(4), Mumbai

..... Appellant

v/s

Shri Ajay Gupta
301-A, Mithila Apartment
J.B. Nagar, Andheri (East)
Mumbai 400 059
PAN - AACPG8928R

..... Respondent

Assessee by : Shri R.C. Jain
Revenue by : Smt. Jacinta Zimik Vashai

Date of Hearing - 13.11.2019

Date of Order - 26.11.2019

ORDER

This is a bunch of five appeals concerning the same assessee. Out of these, three are by Revenue and two by the assessee. The appeals pertain to the assessment years 2006-07, 2007-08, 2009-10 and 2012-13.

ITA no.1824/Mum./2016 **Revenue's Appeal – A.Y. 2006-07**

2. The only ground raised by the Revenue reads as under:–

"On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in restricting the addition of commission to ₹ 1,21,841, by taking commission @ 0.25% as against ₹ 14,62,097, made by the A.O. taking the commission @ 3% without appreciating the fact that the other parties who had given accommodation entries in the form of bogus purchases and sale to M/s. LIL, have accepted in statement u/s 131 that they had received 3% commission on such transactions made with Loha Ispaat Group."

3. Brief facts are, in the course of a search and seizure operation carried out under section 132(1) of the Income Tax Act, 1961 (for short "*the Act*") in case of the assessee as well as Loha Ispaat Ltd. (LIL), it was found that the assessee has undertaken certain sale and purchase transactions with LIL which are only in the nature of paper transactions. In the statement recorded under section 132(4) of the Act during the search and seizure operations, the assessee also

admitted this fact. It was submitted by the assessee that the sale and purchase transactions with LIL are not genuine transactions and the assessee had just lent his name by receiving commission of 0.25% of the bill value. During the assessment proceedings, the Assessing Officer, on the basis of incriminating material found during the search and seizure operation as well as the statement recorded under section 133(4) of the Act from the assessee, held that sale and purchase transaction with LIL and other Group entities are bogus and accordingly proceeded to compute commission income @ 3% of the bill amount which resulted in addition of ₹ 14,62,097. The assessee challenged the aforesaid addition before the first appellate authority.

4. Learned Commissioner (Appeals), after considering the submissions of the assessee and relying upon the statement recorded under section 132(4) of the Act wherein the assessee admitted of having received commission of 0.25% of the bill value, directed the Assessing Officer to work out the addition @ 0.25% of the value of all the transactions with LIL. Accordingly, he restricted the addition to ₹ 1,21,841.

5. The learned Departmental Representative relied upon the observations of the Assessing Officer.

6. The learned Authorised Representative submitted, the issue is covered by the decision of the Tribunal in assessee's own case for the assessment years 2008-09 to 2011-12 in ITA no.3261/Mum./2016 & Ors., dated 23rd June 2017, wherein the Tribunal has upheld the decision of learned Commissioner (Appeals) in restricting the addition on account of commission income to 0.25% of the transaction value with LIL.

7. We have considered rival contentions and perused the material on record. The dispute is only with regard to the rate at which the commission income in relation to sale and purchase transaction with LIL is to be assessed. While the assessee has claimed the commission income @ 0.25% of the transaction value, the Assessing Officer has enhanced it to 3%. Notably, while deciding identical issue in assessee's own case for the assessment year 2008-09 to 2011-12, the Tribunal, in the order referred to above, has upheld the decision of learned Commissioner (Appeals) in restricting the addition on account of commission income to 0.25% of the transaction value with LIL. Facts being identical, respectfully following the aforesaid decision of the Co-ordinate Bench, we uphold the order of learned Commissioner (Appeals) on the issue. Ground raised is dismissed.

8. In the result, Revenue's appeal is dismissed.

ITA no.1825/Mum./2016
Revenue's Appeal – A.Y. 2007–08

9. The grounds raised by the Revenue are as under:–

"1. On the facts and in the circumstances of the case and in law, the 14. CIT(A) erred in restricting the addition of commission to Rs. 1,65,672/- by taking commission @ 0.25% as against Rs.19,88,0631- made by the AO taking the commission Ca) 3% without appreciating the fact that the other parties who had given accommodation entries in the form of bogus purchases and sale to M/s LIL have accepted in statement u/s131 that they had received 3% commission on such transactions made with Loha Ispaat group."

"2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in directing the AO to restrict the addition on account of bogus purchases to Rs. 11,79,531/- being 12.5% of the bogus purchases as against addition of peak of investment of the purchases amounting to Rs.85,13,2491- made by the AO without appreciating the fact that the assessee had failed to produce documentary evidences to prove the genuineness of the purchases and documents evidencing delivery and receipt of goods and details of the parties to whom such material was sold directly."

10. Ground no.1, is identical to the ground raised by the Revenue in its appeal being ITA no.1824/Mum./2016. Following our decision therein, we uphold the decision of learned Commissioner (Appeals) on the issue. Ground is dismissed.

11. Apropos ground no.2, the facts are, during the assessment proceedings, the Assessing Officer noticed that as per the Sales Tax Department, State of Maharashtra, purchases worth ₹ 94,36,249, claimed to have been made from Apex Steel is non-genuine, as, the concerned selling dealer is a hawala operator and provides

accommodation entries by way of purchase bills. Noticing this fact, the Assessing Officer apart from calling upon the assessee to prove the genuineness of purchases, also conducted independent enquiry by issuing notice under section 133(6) of the Act. As alleged by the Assessing Officer, the notice issued under section 133(6) of the Act returned back un-served as the selling dealer was not found in the given address. Thus, ultimately, the Assessing Officer treated the purchase as non-genuine and added back the balance of ₹ 85,13,249 by treating it as unexplained expenditure under section 69C of the Act. The assessee challenged the aforesaid addition before the first appellate authority.

12. Learned Commissioner (Appeals), after considering the submissions of the assessee in the context of facts and material on record, restricted the addition to 12.5% of the non-genuine purchases.

13. We have considered rival contentions and perused the material on record. In the course of hearing, the learned Authorised Representative submitted before us that while deciding identical issue in assessee's own case for the assessment years 2008-09 to 2010-11, the Tribunal, in order dated 23rd June 2017, has upheld the decision of learned Commissioner (Appeals) in restricting the addition to 12.5% of

the non-genuine purchases. It is observed, identical issue came up for consideration before the Tribunal in assessee's own case for the assessment years 2008-09, 2009-10 and 2010-11 in appeals preferred by the assessee contesting the decision of learned Commissioner (Appeals) in sustaining the addition of 12.5% on the non-genuine purchases. While deciding the issue in the order referred to above, the Tribunal has upheld the decision of learned Commissioner (Appeals). In view of the aforesaid decision of the Co-ordinate Bench in assessee's own case, we do not find any reason to interfere with the decision of learned Commissioner (Appeals) on the issue. Ground raised is dismissed.

14. In the result, Revenue's appeal is dismissed.

ITA no.2150/Mum./2016
Assessee's Appeal – A.Y. 2007-08

15. In ground no.1, the assessee has challenged the decision of learned Commissioner (Appeals) in restricting the addition on account of commission income to 0.25% of the total transaction.

16. In view of our decision in ground no.1, raised by the Revenue in its appeal being ITA no.1825/Mum./2016, this ground has become infructuous, hence, dismissed.

17. In ground no.2, the assessee has challenged the decision of learned Commissioner (Appeals) in restricting the addition on account of non-genuine purchases to 12.5% of such purchases.

18. While deciding identical issue raised in ground no.2, by the Revenue in its appeal being ITA no.1825/Mum./2016, we have upheld the decision of learned Commissioner (Appeals) in restricting the addition to 12.5% of the non-genuine purchases. That being the case, the ground raised has become infructuous, hence, dismissed.

19. In the result, assessee's appeal is dismissed.

ITA no.1826/Mum./2016
Revenue's Appeal – A.Y. 2009–10

20. In ground no.1, the Revenue has challenged the decision of learned Commissioner (Appeals) in restricting the commission income to 0.25% of the total transaction value with LIL.

21. This ground is identical to ground no.1 raised by the Revenue in its appeal being ITA no.1824/Mum./2016. While deciding the issue in the said appeal, we have upheld the decision of learned Commissioner (Appeals) in restricting the addition on account of commission income to 0.25% of the transaction value with LIL. In view of the aforesaid, the ground raised is dismissed.

22. In ground no.2, the Revenue has challenged the decision of learned Commissioner (Appeals) in restricting the addition to 12.5% of the non-genuine purchases.

23. This ground is identical to ground no.2, raised by the Revenue in its appeal being ITA no.1825/Mum./2016. While deciding the issue in the said appeal, we have upheld the decision of learned Commissioner (Appeals) in restricting the addition to 12.5% of the non-genuine purchases. In view of the aforesaid, ground raised is dismissed.

24. In the result, Revenue's appeal is dismissed.

ITA no.2146/Mum./2016
Assessee's Appeal – A.Y. 2012-13

25. The only ground raised by the assessee is contesting the addition of ₹ 2.50 lakh on account of insufficient drawing towards household expenses.

26. In the course of assessment proceedings, the Assessing Officer having found that the assessee has shown inadequate household expenses in different assessment years, beginning from the assessment year 2006-07 to 2012-13 enhanced the household expenses. Consequently, he made additions towards unexplained expenditure under section 69C of the Act in the assessment years

2008–09 to 2012–13. Though, the assessee contested the additions before the first appellate authority, however, he was unsuccessful.

27. We have considered rival contentions and perused the material on record. It is observed, in the assessment years 2008–09, 2009–10 and 2011–12, though, the assessee had contested similar additions in the appeals preferred before the Tribunal, however, in course of hearing of appeals the assessee accepted the additions. Factual position being similar in the impugned assessment year, we decline to interfere with the decision of learned Commissioner (Appeals) on the issue. Ground raised is dismissed.

28. In the result, assessee's appeal is dismissed.

29. To sum up, all the appeals are dismissed.

Order pronounced in the open Court on 26.11.2019

Sd/-
PRAMOD KUMAR
VICE PRESIDENT

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 26.11.2019

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