

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA No. 5974/Mum/2018
Assessment Year : 2009-10

Industrial Engineers Distributors Pvt. Ltd., 182, Gopal Niwas, Lohar Chawl, MUMBAI [PAN : AABCI5672E]	Vs.	Income Tax Officer-4(2)(3), MUMBAI
(Appellant)		(Respondent)

Appellant by : Shri Jitendra Singh, AR
Respondent by : Shri Ram Tiwari, DR

Date of Hearing : 16-09-2019	Date of Pronouncement : 15-10-2019
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ORDER

PER RAJESH KUMAR, A.M:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax(Appeals)-2, Mumbai, dated 31-07-2018.

2. In this appeal, the assessee has raised two Grounds. The First Ground of Appeal raised by the assessee challenges the jurisdiction of the Assessing Officer to re-open the assessment of the assessee u/s.147 of the Income Tax Act (Act) whereas the Second Ground of Appeal is against the

confirmation of addition of Rs.6,31,482/- as made by the AO @ 12.5% of the total alleged bogus purchases.

3. At the time of hearing, the ld AR did not press the ground No.1 and therefore, the same is dismissed as not pressed.

4. As far as the Ground No.2 is concerned, the facts in brief are that assessee filed return of income on 28-09-2009, declaring income of Rs.7,16,069/-, which was processed u/s.143(1) of the Income Tax Act (hereinafter called the Act). Thereafter, the AO observed from the records before him that assessee has made purchases of Rs.50,51,858/- from certain parties which were declared as Hawala Parties by Sales Tax Department, Govt of Maharashtra as they were not doing any genuine business. Accordingly, the assessment was re-opened u/s.147 of the Act after recording reasons to believe and notice u/s.148 of the Act was issued on 12-03-2014, which was duly served upon the assessee.

5. During the course of assessment proceedings, assessee was called upon by the AO to file evidences in support of purchase and prove the genuineness of the same. In response the assessee filed written reply along with evidences to corroborate the purchases. However, the AO was not convinced with the submissions of assessee and accordingly held that the said purchases as bogus purchases as the notice issued u/s.133(6) of the Act to these parties were returned un-served. Ultimately, the AO brought to tax the profit element in the said purchases @12.5% which comes to

Rs.6,31,482/- and the same was added to the income of assessee, in the order framed u/s.143(3) r.w.s. 147 of the Act, dt.27-03-2015.

6. In the appellate proceedings, Ld.CIT(A) confirmed the order of AO by relying on the decision of the Hon'ble Gujarat High Court in the case of Hon'ble Gujarat High Court in the case of Simit P.Sheth (2013) [356 ITR 451] (Guj).

7. Ld.AR vehemently argued before us that the assessee is dealing in electronic goods and the Gross Profit of the assessee during the year is about 7%. Ld.AR also submitted that in order to prove the purchases, assessee has filed all the necessary evidences .The ld AR argued that the ld CIT(A) has ignored the circumstantial evidences which prove that the margin in the assessee's trade is very meager. The Ld.AR submitted that since assessee has already declared 7% of the Gross Profit on the total purchases, including the bogus purchases, therefore, the addition made by the AO as confirmed by the CIT(A) @12.5% is too high and would lead to un-realistic profit of the assessee, which is too impracticable if the addition is sustained. Accordingly, Ld.AR prayed that reasonable addition may be sustained by deleting the said hypothetical addition.

8. Ld.DR, on the other hand, relied heavily on the orders of CIT(A) and AO submitted that the appeal of assessee may be dismissed as the assessee was found to be engaged in involving bogus purchases from Hawala Parties without any business and thus made savings towards non-payment of

VAT and various other levies. The ld DR ,therefore, prayed before the Bench that the addition confirmed by the Ld.CIT(A) may be sustained.

9. After hearing both the parties and perusing the material on record, we observe that in this case, undisputedly, assessee is beneficiary of bogus Hawala Purchase entries. During the year, the assessee has declared Gross Profit of 7%, all the purchases including Hawala Purchases. Therefore, addition @12.5% appears to be excessive and unreasonable in view of the profits of the assessee. Since the assessee has already disclosed Gross Profit @7%, , we are ,therefore , of the opinion that it would be reasonable and fair if the Gross Profit is brought to tax @ 6% to the said bogus purchases over and above the declared profits by the assessee. Accordingly, we set aside the order of CIT(A) and direct the AO to make addition @ 6%. Hence, the Grounds raised by assessee may be treated as partly allowed.

10. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 15th October, 2019

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai; दिनांक/Dated : 15-10-2019

TNMM

Sd/-

(RAJESH KUMAR)

लेखा सदस्य/ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent

3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai
4. आयकर आयुक्त / CIT, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक
पंजीकार (Dy./Asst. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai