

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

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

ITA No. 5103/Mum/2018
Assessment Year : 2009-10

Income Tax Officer, Ward-3(4), Kalyan (W)	Vs.	M/s.Srushti Enterprises, B-8, Tridev CHS Ltd., RH-84, MIDC, Dombivali (E) MUMBAI [PAN : ABLFS0060L]
(Appellant)		(Respondent)

C.O No. 220/Mum/2019
(Arising out of ITA No.5103/Mum/2018)
Assessment Year : 2009-10

M/s.Srushti Enterprises, B-8, Tridev CHS Ltd., RH-84, MIDC, Dombivali (E) MUMBAI [PAN : ABLFS0060L]	Vs.	Income Tax Officer, Ward-3(4), Kalyan (W)
(Cross-Objector)		(Respondent)

Revenue by : Shri R.Bhoopathi, DR
Assessee by : Dr. P.Daniel, AR

Date of Hearing : 18-09-2019	Date of Pronouncement : 22-10-2019
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ORDER

PER RAJESH KUMAR, A.M:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax(Appeals)-1, Thane, dated 25-06-2018 challenging the appellate order wherein the Id CIT(A) has directed to estimate the income under section 44AF @ 5%. The assessee has filed Cross-Objection against

the appeal of Revenue for the AY.2009-10 challenging the said direction of the assessee to estimate the income under section 44AF and also the sustenance of addition on account of expenses of Rs. 77,064/-. We shall first decide the grounds raised by the assessee in cross objections.

2. Brief facts of the case are that, assessee is a partnership firm, engaged in the business of supply of hardware materials. The assessee filed the return of income for the year under consideration on 23-09-2009 electronically, declaring total income at Rs.1,60,741/-. Subsequently, information was received from Sales Tax Department through the DGIT(Inv.), Pune, that the assessee was one of the beneficiaries, who had obtained bogus purchase bills from the alleged Hawala dealers. As a result, the case of the assessee was re-opened u/s 147 of the Act after recording necessary reasons u/s.148(2) of the Act and notice u/s 148 of the Act was issued and served upon the assessee. The AO observed that out of total purchases as disclosed by the assessee of Rs.85,95,331/-, the purchases from hawala parties were of Rs. 8,30,706/-. The assessee produced bills vouchers, sales bills, stock tally and payment details. Before the AO, assessee submitted that the assessee has no knowledge of such fact hawala dealers and was under the bonafide belief that the goods purchased were from the genuine suppliers. The assessee contended that the payments were also made by account payee cheques. The notices issued under section 133(6) of the Act to the suppliers was returned unserved. The assessee also submitted that he was forced to pay the sales tax dues of the suppliers who defaulted in the payment of VAT

and were absconding and hence filed a revised return. The assessee submitted before the AO that it had sold the materials purchased from the alleged bogus suppliers to its customers and therefore there cannot be any bogus purchases as alleged as the stocks were procured from the suppliers and supplied to the customers. Finally the bAO treated the said purchases of Rs. 8,30,706/- as non genuine and added the same to the income of the assessee. The AO also disallowed Rs. 77,064/- being 20% of the aggregate expenses of Rs.3,85,321/= comprising conveyance Rs. 56,138/-, Mobile expenses Rs. 50,400/- , Misc. expenses Rs. 1,26,576/- and transport charges Rs. 1,52,207/- by observing that bills , vouchers produced by the assessee , it could not be possible to verify the expenses and personal element could not be rules out. Aggrieved with the said order of the assessment u/s.143(3) r.w.s.147 of the Act, dt.23-02-2015, the assessee preferred an appeal before the CIT(A).

3. In the appellate proceedings, the Ld.CIT(A) partly allowed the appeal of assessee after taking into consideration the contentions of the assessee by directing the AO to estimate the income at 5% of the turnover which worked out to Rs. 4,87,185 under section 44AF of the Act while sustaining the disallowance of Rs. 77,064 as the ground was not pressed. Aggrieved by the appellate order, the Revenue is in appeal before us.

4. After hearing both the parties and perusing the material on record, we observe that in this case, undisputably the assessee is beneficiary of bogus purchase bills from the

alleged Hawala Dealer to the tune of Rs. 8,30,706/-. The authorities below have not disputed the sales. Moreover the assessee has furnished the stock tally explaining the goods received even from the alleged hawala dealer and sales thereof. In such cases, normally the goods are purchased from the grey market while the bills obtained from hawala operators thereby the assessee makes saving of incidental expenses including VAT but in the present case the VAT was recovered from the assessee when the supplier of goods could not be traced by the Sales Tax Deptt. In view of these facts and circumstances of the case, we are of the view that that it would be reasonable to assess the profit element on alleged bogus purchases @ 12.50%. The ground no. 1 & 2 are partly allowed.

5. As regards the confirmation of disallowance of expenses of Rs. 77,064/- by the 1d CIT(A), we find that the disallowance has not been pressed before the first appellate authority and therefore we are not inclined to disturb the order of 1d CIT(A) on this issue . Accordingly the ground no. 3 is dismissed.

6. Since we have decided the issues raised Cross-Objection filed by assessee, the appeal by the revenue becomes infructuous and is dismissed.

Order pronounced in the open court on 22.10.2019

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER
मुंबई/Mumbai; दिनांक/Dated : 22-10-2019

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