

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER
AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA NO.6424/MUM/2018(A.Y. 2010-11)
ITA NO.6425/MUM/2018(A.Y. 2011-12)

Devendra P. Sheth,
C-604, Pushpa Heritage,
Dhanukar Wadi, Gokhale Road,
Mumbai 400 067.
PAN:ALQPS0537B

..... Appellant

Vs.
ITO Ward 33(1)(4),
Income Tax Office,
Bandra Kurla Complex,
Mumbai

..... Respondent

Appellant by : Shri Dharmil Jhaveri
Respondent by : Shri Kumar Padampani Bora

Date of hearing : 10/12/2019
Date of pronouncement : 10/12/2019

ORDER

PER VIKAS AWASTHY, JM:

The appeal of the assessee in ITA No.6424/Mum/2018 is directed against the order of Commissioner of Income Tax(Appeal)-45, Mumbai (in short "the CIT(A)") dated 25/07/2018 for assessment year 2010-11. The second appeal of the assessee in ITA No.6425/Mum/18 is directed against the order of CIT(A)-44, Mumbai dated 28/08/2018 for assessment year 2011-12. Since the issue raised in both the appeals is identical and is

arising from same set of facts, therefore, these appeals are taken up together for adjudication and are disposed of vide this common order.

2. For the sake of convenience the facts are extracted from appeal of the assessee in ITA No.6424/Mum/2018 for assessment year 2010-11. The assessee is a trader in iron and steel. Information was received by the Income Tax Department from the Sales Tax Department, Government of Maharashtra regarding assessee's alleged indulgence in bogus purchases of iron and steel from hawala dealers. Consequently, the assessment proceedings for assessment year 2010-11 and 2011-12 were reopened under section 147 r.w.s. 148 of the Income Tax Act, 1961 (in short "the Act"). In reassessment proceedings for assessment year 2010-11, it was alleged that assessee has made bogus purchases to the tune of Rs.60,55,355/- from the following parties:

S.No.	Name	FY	Amount(Rs)
1.	National Trading Co.	2009-10	6,97,272
2.	Ambika Trade Impex	2009-10	19,16,415
3.	Mahavir Enterprises	2009-10	9,20,864
4.	Balaji Trading Company	2009-10	18,17,311

The Assessing Officer after placing reliance on the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth reported as 356 ITR 451 (Guj) made addition of 12.5% of such alleged bogus purchases (i.e. Rs. 7,56,916/-).

3. The assessee carried the issue in appeal before CIT(A). The CIT(A) after considering the facts and the contentions of the assessee restricted the addition to 8% of the alleged bogus purchases, i.e. the addition was

restricted to Rs.4,84,428/-. Still aggrieved, the assessee is in second appeal before the Tribunal.

4. Shri Dharmil Jhaveri appearing on behalf of the assessee submitted that the assessee has furnished various documents before the authorities below to substantiate genuineness of the purchases. The CIT(A) after considering the same estimated GP addition at 8% of the bogus purchases. The Id.Representative of the assessee placed reliance on the decision of Co-ordinate Bench of the Tribunal in the case of Mr. Milan Kantilal Shah in ITA No.5161/Mum/2016 decided on 19/09/2019 to contend that under similar set of facts the Tribunal had restricted the addition to 5% of the alleged bogus purchases.

5. Per contra, Shri Kumar Padampani Bora representing the Department has venemently defended the finding of CIT(A).

6. We have heard the submissions made by rival sides and have perused the orders of authorities below. The assessee is a trader in iron & steel. The assessee has filed a statement of facts, wherein he has given GP ratio of the last three years. For the sake of convenience, the same is reproduced herein below:-

A.Y	G.P. Ratio
2008-09	2.22%
2009-10	2.49%
2010-11	3.69%

The sales declared by the assessee have not been disputed by the authorities below. The GP @ 8% is estimated on the alleged bogus purchases made by the assessee from grey market. We find that Co-

ordinate Bench of the Tribunal in the case Milan Kantilal Shah vs. ITO (supra), wherein the assessee was also involved in similar business of trading in iron & steel, has applied GP rate of 5% on alleged bogus purchases.

7. Taking into consideration entirety of facts and the decisions of Co-ordinate Bench, we deem it appropriate to estimate GP on alleged bogus purchases at 5% over and above the GP declared by the assessee.

8. In the result, appeal of the assessee is partly allowed in the terms aforesaid.

ITA No.6425/Mum/2018- A.Y.2011-12:

9. Both sides are unanimous in stating that facts in the assessment year 2011-12 are identical to assessment year 2010-11. The finding given by us in assessment year 2010-11 would apply *mutatis mutandis* to the facts in 2011-12, as well. Consequently, the impugned order is modified and GP on bogus purchases is estimated at 5% over and above GP declared by the assessee.

10. In the result, appeal of the assessee for 2011-12 is partly allowed in the terms aforesaid.

12. To sum up, appeals of the assessee for A.Y 2010-11 and 2011-12 are partly allowed.

Order pronounced in the open court after hearing the appeal on Tuesday the 10th day of December , 2019.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 10/12/2019

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