



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

BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA no.4459/Mum./2018
(Assessment Year : 2009-10)

Aadity Stainless Pvt. Ltd.
1st Floor, Prabhat Building
9th Khetwadi Lane
Girgaon, Mumbai 400 004
PAN – AAACV1724D

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-4(3)(2), Mumbai

..... Respondent

Assessee by : Shri Neelkanth Khandelwal
Revenue by : Shri S. Michael Jerald

Date of Hearing – 12.12.2019

Date of Order – 13.12.2019

ORDER

PER M. BALAGANESH, A.M.

The present appeal has been filed by the assessee challenging the order dated 20th June 2018, passed by the learned CIT(A)-9, Mumbai, for the assessment year 2009-10.

2. Ground no.1, challenging the validity of re-opening of assessment was stated to be withdrawn by the assessee for which necessary endorsement has been duly made by the learned Counsel

for the assessee. Accordingly, ground no.1, raised by the assessee is dismissed as withdrawn.

3. Ground no.2(a) and 2(b), raised by the assessee is with regard to challenging the validity of disallowance made on account of bogus purchase in the sum of ₹ 10,15,361, on account of possible profit element @ 12.5% embedded in such purchases.

4. We have considered rival submissions and perused the material available on record. We find that the assessee is a Private Limited Company engaged in the business of manufacturing and trading in Stainless Steel Tubes and Pipes. The original assessment was completed under section 143(3) of the Income Tax Act, 1961 (for short "*the Act*") on 23rd December 2011, determining the total loss at ₹ 1,10,18,825. Subsequently, notice under section 148 of the Act, was issued to the assessee on 13th March 2014, on the basis of information received from the Sales Tax Authorities and processed by the DGIT (Inv.), Mumbai, wherein the assessee was found to have made certain bogus purchase worth ₹ 81,22,888, from the following three parties:—

1.	<i>P.K. Trading Co.</i>	₹ 31,676
2.	<i>Rajendra Inpex India</i>	₹ 34,58,749
3.	<i>NewzoneMultitrade Pvt. Ltd.</i>	₹ 46,32,463

5. We also find that the Assessing Officer had observed in his order that the assessee was asked to file the details of purchases like purchase bills, payment details, vehicle details, lorry receipt, inspection note, gate pass, stock inward note, stock outward note, stock movement register, bank statement, etc., in respect of purchases claimed to have been made by the assessee. The Assessing Officer also noted that, the assessee, in response, had filed certain details called for by him. We find that the Assessing Officer had also noted that the assessee, vide letter dated 19th February 2015 and 12th March 2015, had furnished the following details before him:—

- (a) *Copy of Ledger Account;*
- (b) *Purchase Bills, corresponding sale bills,*
- (c) *Stock Register;*
- (d) *Copy of the bank account statement reflecting the amounts paid to purchase parties;*
- (e) *A write-up explaining reasons on the show cause given as to why the purchases made by it from the aforesaid hawala parties should not be treated as "bogus purchases".*
- (f) *Quantitative details of the goods purchased & sold. One-to-one reconciliation of item purchased & sold."*

6. We find that the Assessing Officer did not agree to the contentions of the assessee and rejected the books of account under section 145(3) of the Act and proceeded to estimate the possible profit embedded on the aforesaid bogus purchase @ 12.5% and accordingly

made disallowance of ₹ 10,15,361 [₹ 81,22,888 (x) 12.5%] in the assessment. This action of the Assessing Officer was upheld by the learned CIT(A).

7. We find that there is no dispute that the purchases made by the assessee from the aforesaid disputed three parties were in connection with trading activity carried out by the assessee. It is not in dispute that the assessee had made sales out of the aforesaid three purchases and had duly accounted for the same in the books of account. We find that the sales reported by the assessee have not been disputed by the Revenue. We find that in similar type of industries in which the assessee is engaged, profit percentage had been estimated by this Tribunal in several cases @ 5%. Hence, we hold that adoption of profit of 5% on the disputed purchases of ₹ 81,22,888, would meet the ends of justice in the facts and circumstances of the instant case and considering the industry margin. Accordingly, the issues raised in ground no.2(a) and 2(b), are partly allowed.

8. Ground no.3, raised by the assessee is with regard to chargeability of interest under section 234B and 234C of the Act, which are consequential in nature and does not require any specific adjudication.

9. Ground no.4, raised by the assessee is with regard to initiation of penalty proceedings under section 271(1)(c) of the Act, which would be premature for our adjudication at this stage.

10. Ground no.5, raised by the assessee is general in nature and does not require specific adjudication.

11. In the result, assessee's appeal stands partly allowed.

Order pronounced in the open Court on 13.12.2019

Sd/-
MAHAVIR SINGH
JUDICIAL MEMBER

Sd/-
M. BALAGANESH
ACCOUNTANT MEMBER

MUMBAI, DATED: 13.12.2019

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