

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

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
6674/Mum/18	2009-10	Smt. Saroj Shailendra Bhagat, (Proprietor of M/s.Kamlarya Engineers & Fabricators) 12/1, Kishan Mhatre Bldg, Cholegaon, Thakurli (East) [PAN: ALHPB9932C]	The Income Tax Officer, Ward-3(3), Kalyan Present jurisdiction: The Income Tax Officer, Ward-3(4), Kalyan
6861/Mum/18	2009-10	The Income Tax Officer, Ward-3(4), Kalyan	Smt. Saroj Shailendra Bhagat 12/1, Kishan Mhatre Bldg, Cholegaon, Thakurli (East) [PAN: ALHPB9932C]

Assessee by : Shri Nimesh Chothani, AR
Revenue by : Shri R.Bhoopathi, DR

Date of Hearing : 16-12-2019	Date of Pronouncement : 16-12-2019
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ORDER

These cross-appeals by the Assessee and the Revenue are directed against the order of the Commissioner of Income Tax(Appeals)-1, Thane, dated 28-09-2018, for the AY.2009-10.

2. The brief facts of the case as emanating from the records are: The assessee is engaged in the business of steel and stainless steel goods. An information from Sales Tax Department, Government of Maharashtra was received by the Revenue that the assessee has indulged in obtaining bogus purchase bills from certain hawala operators. On the basis of

the aforesaid information, the assessment for AY.2009-10 was re-opened. The AO vide order dt.20-10-2014 passed u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (herein after referred to as 'the Act') held that the assessee had made bogus purchases from the following dealers:

S.No	Name of the dealer	Amount Rs.
1	M/s.Trichipuram Trading Co	1,10,007
2	M/s.Niddhish Impex Pvt Ltd	93,663
3	M/s.Universal Enterprise	7,08,931
4	M/s.Kotsons Impex Pvt Ltd	3,03,471
5	M/s.Haji Rajabali Chittalwala	1,94,604
6	M/s.Mahavir enterprises	3,73,360
	Total Rs.	17,84,036

The AO made addition of the entire aforesaid alleged bogus purchases.

Aggrieved against the assessment order, the assessee filed an appeal before the CIT(A).

3. The First Appellate Authority (FAA), after considering the facts of the case and various decisions, restricted the addition to 25% of alleged bogus purchases i.e., Rs.4,46,009/-. Against the findings of the CIT(A), both, the assessee and the Revenue are in appeal before the Tribunal.

4. The assessee in her appeal has assailed re-opening of assessment u/s.147 of the Act and also the addition confirmed by the CIT(A).

5. Shri Nimesh Chothani, appearing on behalf of the assessee, submitted that the assessee is engaged in trading of steel, the Gross Profit (GP) estimated by the CIT(A) @25% is

very much on the higher side. The Ld.AR referred to the GP declared by the assessee during the FY.2006-07 to 2011-12 at para 6.10 Pg.10 of the CIT(A)'s order. The Ld.AR pointed that the GP declared by the assessee varies between 14% to 18%. The assessee had declared GP of 14.67% in the impugned assessment year. The Ld.AR prayed for restricting the addition to 3% over and above the GP already declared. To support his contentions, the Ld.AR placed reliance on the following decisions:

- i. Shri Sanjay H Shah Vs. ITO in ITA Nos.5063, 5064 & 5065/Mum/17, AYs.2009-10 to 2011-12, decided on 16-02-2018;
- ii. ACIT Vs. Shri Akshay Rajesh Samdariya in ITA No.2076/Pun/2016, AY.2009-10, decided on 31-12-2018;

6. On the other hand, Shri R.Bhoopathi, representing the Department, vehemently defended the assessment order. The Ld.DR submitted that the assessee has failed to substantiate genuineness of the purchases. The assessee also failed to furnish copies of transport and octroi bills, thus, the assessee could not establish trial of goods originating from suppliers to the godown of the assessee. The Ld.DR prayed for modifying the order of CIT(A) and confirming the entire bogus purchases as 'addition'.

7. Heard the submissions made by rival sides and the orders of the authorities below perused. The sales made by the assessee have not been disputed by the Revenue.

Therefore, the entire alleged bogus purchase cannot be added back. Without purchases, there cannot be sales. In the given facts of the case, it appears that the assessee has made purchases from grey market and thereafter, obtained bills from alleged hawala operators. The FAA has restricted the addition to the extent of 25% of the bogus purchases. I am of considered view that estimation of GP made by the FAA is on higher side. The GP declared by the assessee during the assessment year under consideration is 14.67%. In the immediate preceding assessment year, the GP declared by the assessee is 18.27% and in the immediate succeeding assessment year i.e., AY.2010-11, the GP declared by the assessee is 17.28%. The GP declared by the assessee in preceding and succeeding assessment years have been accepted by the Department. Taking into consideration entirety of the facts, the addition to the extent of 5% GP, over and above the GP declared by the assessee would meet the ends of justice. I hold and direct accordingly. The ground No.3 of the appeal by the assessee is thus partly allowed.

8. In ground Nos.1 & 2 of the appeal, the assessee has assailed re-opening of assessment and rejection of books of account, respectively. No submissions were made by the Ld.AR of the assessee on both these grounds. I see no reason to interfere with the findings of CIT(A) on these issues. The ground Nos.1 & 2 of the appeal are dismissed, accordingly.

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

ITA No.6861/Mum/2018:

10. The Revenue in appeal has impugned the findings of CIT(A) in restricting the addition to 25% of bogus purchases.

11. Since the appeal by assessee in restricting the addition on account of bogus purchases is partly accepted, the appeal of the Revenue is liable to be dismissed for the reasons detailed above. The appeal by the Revenue is dismissed, accordingly.

12. To sum-up, the appeal of assessee is partly allowed and the appeal of Revenue is dismissed.

Order pronounced in the open court on Monday, the 16th day of December, 2019

Sd/-
(VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai; दिनांक/Dated : 16-12-2019

TNMM

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,

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