

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

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA NO. 6975/MUM/2018(A.Y.2010-11)
ITA NO. 6977/MUM/2018(A.Y.2011-12)
ITA NO. 6978/MUM/2018(A.Y.2009-10)

Income Tax Officer 19(1)(2),
Room No.204,2nd Floor,
Matru Mandir, Tardeo Road,
Mumbai

..... Appellant

Vs.

Ashuram Udaramji Vishnoi,
Shop No.7, Ground Floor,
66, Cooper Bldg., T.P. Street,
Mumbai 400 020
PAN: AEJPB6455M

..... Respondent

Appellant by : Shri R. Bhoopati
Respondent by : None

Date of hearing : 18/12/2019
Date of pronouncement : 06/01/2020

ORDER

These three appeals by the Revenue for assessment years 2010-11, 2011-12 and 2009-10 are directed against the orders of Commissioner of Income Tax (Appeals)-54 [in short 'the CIT(A)], Mumbai for respective assessment years. All the impugned orders are of even date i.e. 27/09/2018. Since the issue raised in all the three appeals is arising from same set of facts and identical issue is involved, these appeals are taken up together for adjudication and are disposed of by this composite order.

2. The notice of the appeal was sent to the assessee/respondent through RPAD. None appeared to represent the assessee. Hence, these appeals are taken up for hearing with the assistance of Id. Departmental Representative and the material available on record.

3. For the sake of convenience to decide these appeals, the facts are extracted from ITA No.6975/Mum/2018 for assessment year 2010-11. The assessee is a trader in ferrous and non-ferrous metal. The Assessing Officer received information from Sales Tax Department, Maharashtra and DGIT(Inv) that the assessee has indulged in obtaining bogus purchases bills from hawala dealers. Consequently, assessments for assessment year 2009-10, 2010-11 and 2011-12 were reopened. The Assessing Officer in reassessment proceedings for assessment years 2010-11 held that the assessee has made bogus purchases to the tune of Rs.84,29,433/- from various parties. The Assessing Officer made addition of Rs.10,53,679/- i.e. 12.5% of unproved purchases. Aggrieved against the assessment order dated 05/11/2016 passed under section 143(3) r.ws. 147 of the Income Tax Act, 1961 (in short 'the Act'), the assessee filed an appeal before the CIT(A). The first appellate authority partially modified the assessment order and directed the Assessing Officer to reduce gross profit already declared by the assessee from the estimated addition of 12.5%. The Revenue did not find favour with the view of first appellate authority. Hence, the present appeal by the Department.

4. Shri R.Bhoopati representing the Department vehemently defended the assessment order and submitted that the Assessing Officer had

estimated gross profit at 12.5% of the bogus purchases by following the decision of Hon'ble Gujarat High Court rendered in the case of CIT vs. Simith P. Sheth, in Income Tax Appeal No.553 of 2012 decided on 16/01/2013. Once the addition has been estimated by following the order of Hon'ble High Court, no further modification was required to be made by the CIT(A). The Id. Departmental Representative further submitted that the assessee failed to substantiate genuineness of the purchases and parties from whom suspicious purchases were made. The Id. Departmental Representative prayed for reversing the findings of CIT(A) and to uphold the assessment order.

5. I have heard the submissions made by Id. Departmental Representative and have examined the material available on record. The addition on account of bogus purchases have been made by Assessing Officer by estimating gross profit @ 12.5% of alleged bogus purchases. In the first appellate proceedings, the CIT(A) has reduced 12.5% G.P estimated by Assessing Officer by the gross profit already declared by the assessee. Taking into consideration, entirety of facts, I find no reason to interfere with the findings of CIT(A). The order of first appellate authority is reasonable and the same is upheld. The appeal of the Revenue is without any merit and, hence, the same is dismissed.

ITA NOS.6977/MUM/2018(A.Y.2011-12 & 6978/MUM/2018(A.Y.2009-10):

6. The Id. Departmental Representative stated at the Bar that the facts in assessment year 2011-12 and 2009-10 are similar to the facts in assessment year 2010-11. The addition has been made by Assessing

Officer by estimating gross profit @ 12.5% of alleged bogus purchases. The CIT(A) has modified the assessment order by reducing the gross profit already declared by the assessee from 12.5% G.P estimated by Assessing Officer on bogus purchases.

7. On same set of facts I have dismissed the appeal of Revenue in ITA No.6975/Mum/2018 for assessment year 2010-11. The findings given therein would *mutatis mutandis* apply to both these appeals by the Revenue. Accordingly, the appeals of the Revenue for assessment years 2011-12 and 2009-10 are dismissed sans merit.

8. To sum up, all the three appeals of the Revenue are dismissed.

Order pronounced in the open court on Monday, the 06th day of January,2020.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 06/01/2020
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