

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH
MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.6433/Mum/2018
(Assessment Year :2010-11)**

Shri Mukesh Samrathmal Jain 50, Laxmi Nivas, Minty House 2 nd Panjrapole Lane C.P.Tank, Mumbai-400 004	Vs.	Income Tax Officer – 19(2)(3) Matru Mandir Tardeo, Grant Road Mumbai
PAN/GIR No.AFHPJ8141B		
(Appellant)	..	(Respondent)

**ITA No.6280/Mum/2018
(Assessment Year :2010-11)**

Income Tax Officer – 19(2)(3) Matru Mandir Tardeo, Grant Road Mumbai	Vs.	Shri Mukesh Samrathmal Jain 50, Laxmi Nivas, Minty House 2 nd Panjrapole Lane C.P.Tank, Mumbai-400 004
PAN/GIR No.AFHPJ8141B		
(Appellant)	..	(Respondent)

Assessee by	Shri Bhagyashree Jain
Revenue by	Shri Kamal Mangal
Date of Hearing	13/01/2020
Date of Pronouncement	15/01/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

These cross appeals in ITA Nos.6433/Mum/2018 & 6280/Mum/2018 for A.Y.2010-11 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-29, Mumbai in appeal No.CIT(A)-30/IT-420/Ito-19(2)(3)/2016-17 dated 27/08/2018 (Id. CIT(A) in short) against the

order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 18/02/2016 by the Id. Income Tax Officer – 19(2)(3), Mumbai (hereinafter referred to as Id. AO).

2. The only issue on merits to be decided in this appeal is as to whether the Id. CIT(A) was justified in directing the Id. AO to reduce the gross profit already declared by the assessee from the profit element added at 12.5% by the Id. AO in respect of alleged bogus purchases in the facts and circumstances of the case.

2.1. We have heard the rival submissions and perused the materials available on record. We find that assessee is a proprietor of M/s. Moksh Steels and had filed his return of income for the A.Y.2010-11 on 10/10/2010 declaring total income of Rs.1,84,257/-. We find that the Id. AO had observed that assessee had made purchases from four parties for Rs.93,11,923/- as under:-

- a. Rajdeep Metals & Tubes
- b. Prakash Steel India
- c. Harish Metal & Tubes
- d. Good Luck Metal Impex

2.2. The Id. AO observed that these parties appeared in the list of hawala dealers prepared by Maharashtra Sales Tax department and the said information was duly passed on to the Income Tax department which ultimately triggered the reopening of assessment in the hands of the assessee. Such information also contained that these suppliers were engaged in providing accommodation entries in the form of issuing bogus sales / purchase bills without supplying any goods and were providing

merely accommodation entries to various parties. The said information was also based on dealers admission on the basis of statements / deposition / affidavits filed before the Sales Tax authorities. The entire list of beneficiaries parties arising out of such list were published in the website of Maharashtra Sales Tax department and forwarded to DGIT Investigation, Mumbai wherein it was found that assessee was also one of the beneficiaries wherein he had made purchases from four of such tainted parties totalling to Rs.93,11,923/-. It is not in dispute that assessee had submitted the purchase invoices of the aforesaid parties, copies of bank statements evidencing payments made through proper banking channels by issuing account payee cheques in respect of all the parties and highlighting relevant entries, showing the details of purchases of the alleged parties, quantitative tally in respect of entire purchases from the above named parties together with the corresponding sales made thereon. Accordingly, the Id. AO proceeded to tax only profit element embedded in such alleged purchases by holding that the purchases were made from grey market and accordingly taxed 12.5% of the value of such purchases as profit in the assessment. We find that the Id. CIT(A) had in principle upheld the addition of profit element alone embedded in such purchases at 12.5% but further, granted relief to the extent of gross profit already declared by the assessee in the return of income. We find after this relief , the profit that has been subjected to tax worked out to 7.15% of the total value of alleged purchases. Considering the industry in which assessee is engaged, we hold that adoption of profit at 5% of value of alleged purchases would meet the ends of justice. Accordingly, the grounds raised by the assessee are partly allowed and by the revenue are dismissed.

3. We hold that the assessment had been reopened based on information received from Maharashtra Sales Tax department with concrete finding that the aforesaid four suppliers had appeared in the list of hawala dealers published in website of Maharashtra Sales Tax department and also based on certain statements and depositions recorded from various parties by the Sales Tax authorities. It had been brought to notice that the aforesaid four parties were indeed engaged in providing accommodation entries. Since, the assessee had claimed to have made purchases from the aforesaid four tainted parties, certainly the Id. AO did have reason to believe that income of the assessee had escaped assessment in the hands of the assessee. We hold that the law is now well settled that sufficiency of reasons at the time of reopening is not relevant. What is required to be seen is as to whether there was prima facie material available with the Id. AO for triggering or initiating reassessment proceedings, which in the instant case, has been established by the revenue beyond doubt. Hence, in our considered opinion, the reopening has been correctly made by the revenue. Accordingly, the grounds raised by the assessee challenging the validity of reopening are dismissed.

6. In the result, appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

Order pronounced in the open court on this 15/01/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 15/01/2020
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
 ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on	14/01/2020		Sr.PS
2.	Draft placed before author	15/01/2020		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	Yes		