

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.2240/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s. Rooplaxmi Steel 26, Durgadevi Street, Shop No.1, Kumbharwada, Mumbai-400004.	बनाम/ Vs.	ITO 19(3)(1) 2 nd Floor, Matru Mandir Building, Grant Road, Mumbai-400007.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFFR8021D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Naveen Kumar Mishra	
Revenue by:	Shri Drop Singh Meena (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 13/11/2019

घोषणा की तारीख /Date of Pronouncement: 17/01/2020

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 08.02.2019 passed by the Commissioner of Income Tax (Appeals) -6, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2011-12.

2. The assessee has raised the following grounds: -

“1. On the facts and in the circumstances of the case and in law the Hon’ble CIT(A) erred in upholding the assessing officer’s action of reopening of the completed assessment u/s 147 of the IT Act 1961 and the reason assigned for doing so are wrong and contrary to the provision of Income tax act and rules made there under.

2. On the facts and in the circumstances of the case and in law the Hon’ble CIT(A) erred in upholding addition of Rs.71,74,364/- made to the returned income by Ld. AO by treating genuine purchase made from alleged Hawala



parties as bogus and unexplained and the reasons assigned for doing so are wrong and contrary to the provision of income tax and rules made there under.

3. *The appellant craves leave to add to, amend, alter or delete any of the above grounds of appeal on or before the date of hearing.”*

3. The brief facts of the case are that the assessee filed its return of income on 28.09.2011 declaring total income to the tune of Rs.3,261/- for the A.Y. 2011-12. The return was processed u/s 143(1) of the I.T. Act, 1961. The case of the assessee was reopened u/s 147 of the Act. The notice u/s 148 of the Act was also issued. Thereafter, the notice u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. In fact, the case of the assessee was reopened on the basis of information received from the DGIT(Inv.) Wing, Mumbai in which it was conveyed that the assessee has taken the bogus purchase entries from the following four parties: -

Sr, No.	Name of hawala parties	F.Y.	Amount
1	P. M Steel Alloys	2010-11	8,74,280
2	Champion Steel (India)	2010-11	17,130,500
3	Chirag Steel Centre	2010-11	18,28,492
4	Subham Metal Corporation	2010-11	27,41,092
		Total	71,74,364

4. After the reply of the assessee, the AO raised the addition @ 100% of the bogus purchase in sum of Rs.71,74,364/- and assessed the income to the tune of Rs.71,74,364/-. Feeling aggrieved, the assessee an appeal before the CIT(A) who confirmed the addition of the AO, therefore, the assessee has filed the present appeal before us.

ISSUE No. 1



5. This issue has not been pressed by the Ld. Representative of the assessee, therefore, this issue is being decided in favour of the revenue against the assessee being not pressed.

6. At the very outset, the Ld. Representative of the assessee has argued that the issue has duly been covered by the decision of the Hon'ble ITAT in the assessee's own case for the A.Y. 2009-10 Bearing ITA. No.2151/M/2017 dated 30.06.2017. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. Before going further, we deem it necessary to advert the finding of the Hon'ble ITAT in the assessee's own case in ITA. No.215/M/2017 dated 30.06.2017 which is hereby reproduced as under: -

"5. I have heard the rival contentions and gone through the facts and circumstances of the case. Now, before me, assessee contended that first profit element applied by the CIT(A) is on higher side and he requested for reduction in profit rate. I find that the assessee is in the business of dealing in steel and Gross Profit declared by assessee in normal course of business has already been declared by assessee in its books of accounts. Accordingly, the profit declared on bogus purchases cannot be estimated again. I have considered the issue and find that the purchases made from these hawala parties are not proved by the assessee and he admitted. In such situation the assessee might have made purchases from grey market and obtained these bogus bills from hawala parties by paying some commission. In these circumstances the assessee might have saved VAT and also purchased material from grey market at a lower price. For that the CIT(A) has added the entire bogus purchases and according to me this is unreasonable and accordingly a reasonable profit rate is to be estimated. I find that the in the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Smith P Seth 365 ITR 451(Guj), wherein the profit rate is estimated at 12.5%. Accordingly, I am of the view that profit rate at the rate applied by CIT(A) at 12.5% is on higher side for the reason that the assessee is engaged in dealing in steel where margin of profit is very less i.e. GP of 10.75% and NP at 0.90%. According to me, the profit rate in this case should be applied @ of 6% which will meet the end of justice only qua the bogus purchase. The assessee has also disclosed GP on bogus purchases and to give credit for the same, the estimation of profit @ 6% will be sufficient. I confirm the order of CIT(A). The appeal of assessee is partly allowed."



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7. On appraisal of the above mentioned finding, we find that the under the similar circumstances, the Hon'ble ITAT has affirmed the addition to the extent of 6% of the bogus purchase. Accordingly, by honoring the decision of the Hon'ble ITAT in the Assessee own case supra, we restrict the addition to the extent of 6% of the bogus purchase. Accordingly, this issue is decided in favour of the assessee against the revenue.

8. In the result, the appeal filed by the assessee is hereby ordered to be partly allowed.

Order pronounced in the open court on 17/01/2020.

Sd/-
(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 17/01/2020

Vijay/Sr. P.S.

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)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Sr. Private Secretary)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai