

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

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 7721/MUM/2019
Assessment Year: 2009-10
&
ITA No. 7722/MUM/2019
Assessment Year: 2010-11**

Mr. Vikramkumar M Jain,
Shop No. 5, 8 Matru Ashish
Bldg., 8thKhetwadi, Lane,
Mumbai-400004.

PAN No. AHLPJ4185D

Appellant

ITO-19(3)(5),
Vs. Income Tax Office,
MatruMandir, Tardeo Road,
Mumbai-400007.

Respondent

Assessee by : Ms. Pooja M. Chhawachharia, AR
Revenue by : Mr. Anoop Hiwase, DR

Date of Hearing : 28/01/2020
Date of pronouncement: 30/01/2020

ORDER

PER N.K. PRADHAN, A.M.

The captioned appeals filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-30, Mumbai and arise out of the assessment order passed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').As common issues are involved, we are proceeding to dispose them off through a consolidated order for the sake of convenience.

ITA No. 7721/MUM/2019
Assessment Year: 2009-10

2. The grounds of appeal filed by the assessee read as under :

- a On facts and circumstances of the case and in law, Ld. CIT(A) erred in enhancing the addition to 100% of purchases when the appellant was not accorded reasonable opportunity of being heard and the last notice received also did not mention that it was final hearing notice.
- b On facts and circumstances of the case and in law, Ld. CIT(A) erred in rejecting the adjournment request and not intimating the assessee of the same.
- c On facts and circumstances of the case and in law, Ld. CIT(A) erred in enhancing the addition to 100% of purchases ignoring the fact that the purchases treated disallowable forms 53% of the total purchases and it is an accepted fact that without purchases, there cannot be sales.
- d The CIT (A) erred in enhancement to 100% addition without appreciating the understated vital facts that the purchases are duly supported with necessary documentary evidences including quantitative tally of purchases and sales and there appears no sign of it being bogus.
- e The Id. CIT(A) has erred in holding the impugned purchases to be bogus, in spite of voluminous evidences on record simply on the basis that the current addresses of vendors were not provided and the vendors were not produced before the Respondent.
- f On facts and circumstances of the case and in law, Ld. CIT(A) erred in enhancing the addition to 100% of purchases when the appellant being aggrieved for even a 12.5% addition made by the A.O. had filed an appeal before him.
- g The Appellant prays that the addition/ disallowance of entire 16125422/- made in respect of alleged purchases be deleted.

3. Briefly stated, the facts of the case are that the assessee filed his return income for the assessment year (AY) 2009-10 on 19.09.2009 declaring total income of Rs.2,85,480/-. The assessee is engaged in the business of trading in ferrous and non-ferrous metals under the name and style of proprietorship

concern M/s Ripex Metal & Tube. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills from 16 entry providers amounting to Rs.1,61,25,422/-, the Assessing Officer (AO) issued notice u/s 148 to the assessee. During the course of re-assessment proceedings, AO issued notices u/s 133(6) to the concerned parties to verify the genuineness of purchases. The AO had issued those notices in the address given by the assessee. However, those notices were returned un-served by the postal authorities with the remarks “not known” or “no such address” or “left” etc. In such a scenario, the AO rejected the books of accounts u/s 145(3) and by following the decision of the Hon’ble Gujarat High Court in *CIT v. Simit P. Sheth* (2013) 356 ITR 451 (Guj), estimated the profit @ 12.5% on the disputed purchases of Rs.1,61,25,422/-. Thus he made an addition of Rs.20,15,677/- to the income shown by the assessee.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that vide order dated 15.10.2019, the Ld. CIT(A) decided the appeal *ex-parte* mentioning that none appeared for the assessee. Further, he enhanced the estimated profit arrived at by the AO at Rs.20,15,677/- to the full amount of Rs.1,61,25,422/-.

5. Before us, the Ld. counsel for the assessee submits that the appellant should have been allowed reasonable opportunity of being heard by the Ld. CIT(A). But it has been denied to the assessee.

On the other hand, the Ld. Departmental Representative (DR) supports the order passed by the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. We find that in the instant case, the Ld. CIT(A) has not mentioned whether the notices issued by him fixing the case for hearing were received by the assessee.

Considering the co-ordinates of natural justice, we set aside the order of the Ld. CIT(A) and restore the matter to him to pass an order afresh after giving reasonable opportunity of being heard to the assessee.

Facts being identical, our decision for the AY 2009-10 applies *mutatis mutandis* to AY 2010-11.

7. In the result, the appeals are allowed for statistical purposes.

Order pronounced in the open Court on 30/01/2020.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Mumbai;

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Dated: 30/01/2020

Rahul Sharma, Sr. P.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.// Assistant Registrar)
ITAT, Mumbai