



ITA No.219/Mum/2019
Ramrekha Shukla
Assessment Year :2009-10

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No 219/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)

Shri Ramrekha Shukla, A 204, Riddhi Apartment, Saibaba Nagar, S.V. Road, Borivali (W) Mumbai – 400 092.	बनाम/ Vs.	ITO– 32(3)(1), C-11, Pratyaksh Kar Bhawan Bandra Kurla Complex, Bandra East Mumbai – 400 051.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAUPS-0630-A		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Mr. Mahesh Saboo-Ld. AR
Revenue by	:	Ms. Jothilakshmi Nayak-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	29/01/2020
घोषणा की तारीख / Date of Pronouncement	:	05/02/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-44, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)-44/ITO-32(3)(1)/IT-77/15-16 dated 31/12/2018* on following grounds of appeal: -

1. On the facts and circumstances of the case and in law, the authorities below have erred in making/sustaining an addition of Rs.6,17,508/- calculated @ 12.5% of the



ITA No.219/Mum/2019
Ramrekha Shukla
Assessment Year :2009-10

purchases made of Rs. 49,40,061/- from the so called Havala / suspicious dealers and the reasons/justifications assigned/given for doing so were vehemently denied and were wholly wrong which are not in accordance with the facts of the case, and provisions of the Income Tax Act, 1961 and rules made there under.

2. On the facts and circumstances of the case and in law, the Assessing Officer has erred in initiating penalty proceedings u/s 271(1)(c) of the IT Act as no income was concealed nor any inaccurate details of such income were furnished by the appellant.

As evident from grounds of appeal, the sole subject matter of the appeal is estimated additions on account of *alleged bogus purchases*. Ground No.2 is related with initiation of penalty u/s 271(1)(c) which is premature at this stage and hence dismissed.

2. We have carefully heard the submissions made by both representatives. We have also perused relevant material on record. Our adjudication to issue raised in the appeal would be as given in succeeding paragraphs.

3.1 Facts on record would reveal that the assessee being resident individual stated to be engaged in trading of metals under proprietorship concern namely *M/s Ajay Trading Corporation*, was assessed for year under consideration 143(3) r.w.s. 147 on 16/03/2015 wherein the assessee was saddled with impugned estimated additions of Rs.6.17 Lacs on account of *alleged bogus purchases*. The original return of income was filed by the assessee on 29/09/2009 at *Nil* and the same was processed u/s 143(1).

3.2 Pursuant to receipt of certain information from DGIT (Inv.) / Sales Tax Department, Govt. of Maharashtra, it transpired that the assessee obtained bogus purchases bills aggregating to Rs.49.40 Lacs from as many as 9 entities, the details of which have already been extracted in



para-2 of the quantum assessment order. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on 07/03/2014 which was followed by statutory notices u/s 143(2) and 142(1) wherein the assessee was directed to substantiate the purchase transactions.

3.3 Although the assessee defended the purchases but failed to produce any of the suppliers for confirmation of transactions. Accordingly, the books were rejected u/s 145(3) and these purchases were held as bogus / unverifiable purchases. Finally, Ld. AO estimated an addition of 12.5% against such purchases which came to Rs.6.17 Lacs and added the same to the income of the assessee.

4. Before Ld. CIT(A), the assessee drew attention to the fact that corresponding sales were made and the transactions were routed through banking channels. The assessee had submitted the delivery proof of goods and adequate quantitative details of purchase and sales were furnished. The assessee also submitted that keeping in view the Gross Profit / Net Profit Rate of 5.62% & 1.45% respectively, the estimation was on the higher side. The assessee also placed reliance on the appellate order for AY 2010-11. However, not convinced, Ld. CIT(A) observed that the suppliers were found to be non-existent. It was also observed that the factual matrix suggested that the assessee made purchases not from these suppliers but from some other suppliers in the grey market and therefore, estimated additions were justified. The decision of its predecessor for AY 2010-11 reducing the estimation to 5% was held to be non-acceptable / non-applicable. Finally, the estimated



ITA No.219/Mum/2019
Ramrekha Shukla
Assessment Year :2009-10

additions of 12.5% as made by Ld. AO were upheld. Aggrieved, the assessee is under further appeal before us.

5. Upon due consideration, we find that the revenue assailed the order of Ld. CIT(A) for AY 2010-11 passed in assessee's own case, before this Tribunal vide ITA No.6257/Mum/2018 order dated 02/12/2019. However, the coordinate bench upheld the estimation of 5% as made by Ld. CIT(A) and declined to interfere in the same. Therefore, keeping in view the consistent stand of Tribunal, we reduce the estimation to 5% of *alleged bogus purchase* of Rs.49,40,061/- which comes to Rs.2,47,003/-. The orders of lower authorities stand modified to that extent. The Ld. AO is directed to recompute the income of the assessee in terms of this order.

6. Resultantly, the appeal stands partly allowed.

Order pronounced in the open court on 05th February, 2020.

Sd/-
(Mahavir Singh)
उपाध्यक्ष / **Vice President**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 05/02/2020
Sr.PS. Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent



ITA No.219/Mum/2019
Ramrekha Shukla
Assessment Year :2009-10

3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.