



ITA No.4523/Mum/2018
Dinesh H. Trivedi
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.4523/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2009-10)

Dinesh H. Trivedi E-2, Flat No.60, 4 th Floor Tulsi Mahavir Nagar Manpada Road, Dombivali(East) Distt. Thane- 421 201	बनाम/ Vs.	ITO-18(1)(4) Earnest House, 2 nd Floor NCPA Road, Nariman Point Mumbai- 400 021.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. ABTPT-9180-E		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ms. Radha Halbe-Ld.AR
Revenue by	:	Ms. Jyotilakshmi Nayak-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	04/02/2020
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)-29, Mumbai, [in short referred to as ‘CIT(A)’], Appeal No. CIT(A)-29/IT-241/ITO-18(1)(4)/2015-16 dated 15/05/2018 on following grounds of appeal: -



1. On the facts and circumstances and in law, the Ld. CIT(A) is not rendering any legal grounds raised relating to validity of re-opening u/s 147 / 148 and validity of issue of notices u/s 143 (2) / 142 (1) before obtaining the objections of assessee on reasons recorded. He ought to have decided both the legal issues raised.

2. On the facts and circumstances and in law, the Ld. CIT(A) is not justified in confirming the addition of profit of Rs.17,30,530 on alleged suspicious purchases @ 12.5% and further not justified in rendering any decision on alternate claim raised, relying upon the judgement of Hon. Bombay High Court in Pruthvi Brokers' case - 349 ITR 336 pg.

The Ld. AR expressed willingness not to contest legal ground no.1. In ground no.2, the assessee is aggrieved by estimated additions of 12.5% on account of *alleged bogus purchases*.

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 L.D. Enterprises*, was assessed for year under consideration 143(3) r.w.s. 147 on 20/03/2015 wherein the assessee was saddled with impugned estimated additions of Rs.17.30 Lacs on account of *alleged bogus purchases*. The original return of income was filed by the assessee on 15/09/2009 at Rs.2.99 Lacs which 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.138.44 Lacs from as many as 10 entities, the details of which have already been extracted in para-1 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 by submitting purchase invoices, delivery challans, bank statements evidencing payment through banking channels, ledger extracts etc. but failed to substantiate the delivery of material. The assessee also failed to file confirmation letters from the suppliers. Consequently, Ld. AO estimated an addition of 12.5% against such purchases which came to Rs.17.30 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 accepted and the estimation as on higher side. However, the same could not convince Ld. CIT(A) who upheld the action of Ld. AO in making estimated additions of 12.5%. Aggrieved, the assessee is under further appeal before us.

5. Upon due consideration, we are of the opinion that there could be no sale without actual purchase of material particularly when the assessee was into trading activities. The sales turnover has not been disputed / disturbed by the revenue. The assessee was in possession of primary purchase documents and the payments to the suppliers were through banking channels. However, at the same time, the assessee failed to produce even a single supplier out of 10 suppliers to confirm the transactions. No confirmation letters were filed from the suppliers. The stated factual matrix, in our considered opinion, would make it a fit case to make estimated additions to account for profit element embedded in



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these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey / unorganized market and undue benefit of VAT against such bogus purchases, which lower authorities have rightly done so. However, keeping in view the fact that the assessee was dealing in low-margin commodity like iron & steel, the estimation of 12.5% was on higher side. Therefore, we restrict the same to 5% of alleged bogus purchases of Rs.1,38,44,238/- which comes to Rs.6,92,212/-. The balance additions stand deleted. The orders of lower authorities stand modified to that extent.

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
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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
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.