

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER
AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA NO.1000/Mum/2019(A.Y.2010-11)

Ganpat Metal Industries
Shop No.3, Narayan Niwas,
2nd Khetwadi Lane,
Near Alankar Cinema,
Mumbai 400 004.
PAN:AAGFG1194B

..... Appellant

Vs.

Income Tax Officer , Ward 19(1)(3),
2ND Floor, Room No.220,
Matru Mandir, Tardeo Road,
Mumbai 400 007

..... Respondent

Appellant by : Shri Aditya Ramachandran
Respondent by : Shri Amit Pratap Singh

Date of hearing : 10/02/2020
Date of pronouncement : 10/02/2020

ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals) – 7, Mumbai (in short 'the CIT(A)') dated 18/12/2018 for assessment year 2010-11.

2. Shri Aditya Ramachandran, appearing on behalf of the assessee submitted that the solitary ground in this appeal is against the addition made on account of alleged bogus purchases. The Id. Authorized Representative of the assessee submitted that in reassessment proceedings, the Assessing Officer observed that assessee had indulged in obtaining bogus purchase bills aggregating to Rs.59,69,054/- from various hawala parties. The Assessing Officer estimated GP @ 12.5% on the alleged bogus purchases and made addition of Rs.7,46,132/-. Aggrieved against the assessment order dated 07/03/2016 passed under section 144 r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act'), the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee and confirmed addition.

3. The Id. Authorized Representative for the assessee contended that the assessee is engaged in the business of trading in ferrous and non-ferrous metals. The GP @ 12.5% estimated by the authorities below is very much on the higher side. The Id. Authorized Representative for the assessee placed reliance on the decision of Tribunal in the case of Mukesh Samarthmal Jain vs. ITO, in ITA No.7476/Mum/2018 decided on 31/01/2020, wherein GP @ 4% on alleged bogus purchases was determined.

4. On the other hand, Shri Amit Pratap Singh, representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

5. We have heard rival sides and have perused the orders of authorities below. The addition has been made on account of bogus purchases. It is a well settled legal position now, that where the assessee has indulged in bogus purchases and sales have not been disputed by the Revenue, it is only

profit element embedded in the bogus purchases that should be brought to tax. The Assessing Officer estimated GP @12.5% on the alleged bogus purchases. The same has been confirmed by the CIT(A). Taking into consideration the nature of assessee's business and surrounding circumstances, we are of considered view that ends of justice would be served if GP on bogus purchases is restricted to 8% over and above GP declared by the assessee. Thus, the appeal of assessee is partly allowed in the terms aforesaid.

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

Order pronounced in the open court after the hearing on Monday , the 10th day of February, 2020.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 10/02/2020
Vm, Sr. PS(O/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./Asstt. Registrar)
ITAT, Mumbai