

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

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI N.K.PRADHAN, ACCOUNTANT MEMBER

ITA NO.147/MUM/2019(A.Y.2010-11)

ITA NO.148/MUM/2019(A.Y.2011-12)

ACIT -26(2)

Room No.510, 5th Floor,

C-11, Pratyakshya Kar Bhavan,

BKC, Bandra (E)

MUMBAI 400 051

..... Appellant

Vs.

Pukhraj T. Purohit,

4, Nataline Industrial Estate,

Kurla Andheri Road, Sakinaka,

Mumbai 400 072.

PAN: AAFPP 3330H

..... Respondent

Appellant by : Shri R. Bhoopati

Respondent by : Ms. Kinjal Bhuta

Date of hearing : 21/01/2020

Date of pronouncement : 20/02/2020

ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-38, Mumbai (in short 'the CIT(A)') for the assessment years 2010-11 and 2011-12, respectively. Both the impugned orders are of even date i.e. 27/07/2018. Since, the facts and the ground raised

in both these appeals are similar, these appeals are taken up together for adjudication and are disposed of by this common order.

ITA No.147/Mum/2019 (A.Y.2010-11):

2. The brief facts of the case as emanating from the records are: The assessee is a trader in iron and steel items. On the basis of information received from the Sales Tax Department, Government of Maharashtra, the Assessing Officer reopened the assessment for the reasons that assessee has obtained bogus purchase bills aggregating to Rs.52,43,128/- from various hawala dealers. The Assessing Officer held that since the assessee had failed to produce the parties from whom the alleged goods were purchased and has also failed to show trail of goods the assessee has indulged in obtaining bogus purchase bills. The Assessing Officer estimated GP on alleged bogus purchases @ 25%. Thus, the Assessing Officer made addition of Rs.13,10,782/- on account of non-genuine purchases. Aggrieved against the assessment order dated 25/02/2016 passed under section 143(3) 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), after examining the facts of the case restricted the GP on alleged bogus purchases to 12.5% of such bogus purchases. The Revenue is in appeal assailing the findings of CIT(A) in reducing the G.P rate on bogus purchases.

3. Shri R. Bhoopathi, representing the Department, vehemently defended the assessment order and submitted that the assessee has failed to discharge his onus in proving genuineness of the purchases. The Assessing Officer in a fair and reasonable manner has estimated GP on bogus purchases to 25%. The CIT(A) has erred in further reducing it to 12.5%. The Id. Departmental

Representative prayed for reversing the findings of CIT(A) and upholding the addition as made in assessment order.

4. On the other hand, Ms. Kinjal Bhuta, appearing on behalf of the assessee vehemently supported the order of CIT(A).

5. Both sides heard. Orders of authorities below examined. The assessee has allegedly obtained bogus purchase bills aggregating to Rs.52,43,128/- from declared hawala dealers. The Assessing Officer estimated GP @ 25% on the alleged bogus purchases and thus, made addition of Rs.13,10,782/-. The CIT(A) after placing reliance on the decision of Hon'ble Gujarat High Court in the case of CIT vs. Samit P. Sheth, 356 ITR 451(Guj) estimated GP @ 12.5% on bogus purchases. We are of the considered view that the order of CIT(A) is reasonable and justified, and hence, warrants no interference. The appeal of Revenue is dismissed being devoid of any merit.

ITA No.148/Mum/2019 (A.Y.2011-12):

6. The facts in the assessment year 2011-12 are identical to the facts in the appeal by Revenue in assessment year 2010-11 except for the amount of alleged bogus purchases. In this assessment year, the assessee has obtained bogus purchase bills aggregating to Rs.22,58,688/-. The Assessing Officer estimated GP @ 25% and made addition of Rs.5,64,672/-. In first appellate proceedings, the CIT(A) restricted the GP to 12.5% and confirmed the addition of Rs.2,82,336/-.

7. The findings given by us while deciding the appeal of Revenue in assessment year 2010-11 would *mutatis mutandis* apply to the present appeal. The appeal of the Revenue is dismissed being devoid of any merit.

8. In the result, appeals of the Revenue are dismissed.

Order pronounced in the open court on Thursday, the 20th day of February, 2020.

Sd/-
(N.K.PRADHAN)

ACCOUNTANT MEMBER

Mumbai, Dated 20/02/2020

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.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai