

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

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

ITA NO.7137/MUM/2018(A.Y.2009-10)

ITO 27(1)(3),
Room No.409, 4th Floor,
Tower No.6, Vashi Rly. Station Complex,
Vashi, Navi Mumbai 400 703
Appellant

Vs.

Shri Hemal Maganlal Shah,
78, 4th Floor, Pannkaj B,
LBS Marg, Ghatkopar (W),
Mumbai 400 086
PAN: AMFPS 8271G Respondent

C.O. NO.24/MUM/2020
(Arising out of ITA NO.7137/MUM/2018(A.Y.2009-10))

Shri Hemal Maganlal Shah,
78, 4th Floor, Pannkaj B,
LBS Marg, Ghatkopar (W),
Mumbai 400 086
PAN: AMFPS 8271G Cross
Objector

Vs.

ITO 27(1)(3),
Room No.409, 4th Floor,
Tower No.6, Vashi Rly. Station Complex,
Vashi, Navi Mumbai 400 703 Appellant in
appeal

Appellant by : Ms. R.Kavitha
Respondent by : S/Shri Nemish Rajesh Shah & Rajesh G. Shah

Date of hearing : 18/02/2020
Date of pronouncement : 20/02/2020

ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax(Appeals)-26,Mumbai (in short 'CIT(A)) dated 27/09/2018 for the assessment year 2009-10. The assessee filed Cross Objections in the appeal filed by the Revenue.

2. The Cross Objections are time barred by 133 days. The assessee has filed an application seeking condonation of delay in filing of cross objections. The primary reason for delay in filing of the cross objections is the ill health of the mother of the assessee. Taking a liberal view on the reasons explained by the assessee i.e. medical exigency, the delay of 133 days in filing of the cross objections are condoned and the same is admitted to be head on merits.

3. Shri Nemish Rajesh Shah, appearing on behalf of the assessee submitted that the assessee is a trader of building material. In the reassessment proceedings the Assessing Officer held that the assessee had made bogus purchases aggregating to Rs. Rs.35,81,045/- from various hawala dealers. The Id. Authorized Representative for the assessee submitted that during assessment proceedings the assessee furnished bank statement to

substantiate genuineness of the purchases. The Id. Authorized Representative for the assessee pointed that all payments for purchase of the goods were made through banking channel. However, the Assessing Officer made addition only for the reason that the assessee had failed to produce the parties. The Assessing Officer made addition on the basis of peak purchases from the suspected parties. Aggrieved against the assessment order dated 11/03/2015 passed under section 143(3) r.w.s. 147 of the Act, the assessee filed appeal before CIT(A). The CIT(A) after examining the facts estimated GP @ 12.5% of the alleged bogus purchases. The Id. Authorized Representative for the assessee submitted that the estimation made by the CIT(A) is on the higher side. The Id. Authorized Representative for the assessee prayed for reducing the GP on the alleged bogus purchases to 3%.

4. On the other hand, Ms. R. Kavith, representing the Department vehemently defended the assessment order. The Id. Departmental Representative submitted that the Assessing Officer had made fair and reasonable addition in respect of bogus purchases. The CIT(A) further reduced the same to 12.5% without properly appreciating the facts of the case.

5. We have heard the submissions made by rival sides and have perused the orders of authorities below. The assessee is allegedly involved in obtaining bogus purchase bills from hawala operators. The assessee purportedly obtained bogus purchase bills amounting to Rs.35,81,045/- from various dealers. The Assessing Officer made addition on account of bogus purchases on the basis of peak purchases from hawala dealers i.e. Rs.8,48,115/- . In the first appellate proceedings, the CIT(A) following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth, reported as 356 ITR

451 (Guj) estimated GP @ 12.5% on the bogus purchases. The assessee is seeking further reduction in GP rate on the ground that the GP declared by the assessee on normal purchases is around 2%.

On the contrary, the Revenue in its appeal has prayed for restoring the finding of Assessing Officer. After taking into consideration entirety of facts including the assessee's nature of business, the quantum of total purchases made by the assessee vis-à-vis alleged bogus purchases and the GP declared by the assessee on undisputed purchases, we are of considered opinion that to meet the ends of justice GP @ 8% of the alleged bogus purchases would be fair and reasonable. Thus, in view of our above finding, the appeal of Revenue is dismissed and the cross objections of assessee are partly allowed in the terms aforesaid.

6. In the result, appeal by the Revenue is dismissed and cross objections by the assessee are partly allowed.

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

Sd/-
(G.MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL 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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai