

आयकर अपीलीय अधिकरण
IN THE INCOME TAX APPELLATE TRIBUNAL
मुंबई पीठ "एस एम सी"
MUMBAI BENCH "SMC", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं. ITA NO.86/MUM/2019(A.Y.2011-12)

M/s. Jaydeep Metals & Tubes,
40/27, Ground Floor,
Shree Niwas Bldg., 2nd
Carpenter Street, Mumbai 400 004
PAN: AAFFJ3431M

..... अपीलार्थी /Appellant

बनाम Vs.

ITO Ward – 19(2)(1),
Mumbai

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Arbina Shaikh

प्रतिवादी द्वारा/Respondent by : Shri R. Bhoopathi

सुनवाई की तिथि/ Date of hearing : 23/01/2020

षणा की तिथि/ Date of pronouncement : 13/03/2020

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-6, Mumbai (in short 'the CIT(A)) dated 26/10/2018 for the assessment year 2011-12.

2. Ms. Arbina Shaikk, appearing on behalf of the assessee submitted that the assessee is engaged in trading of ferrous and non-ferrous metals. The assessee filed its return of income for the impugned assessment year on

20/09/2011 declaring total income of Rs.53,203/-. On the basis of information received from Investigation Wing of the Department, assessment for assessment year 2010-11 was reopened by the Assessing Officer on the ground that assessee has obtained bogus purchase bills amounting to Rs.40,51,270/- from declared hawala dealers. The Assessing Officer made addition of Rs.5,06,408/- i.e. 12.5% of the total alleged bogus purchases. Aggrieved by the assessment order dated 11/11/2016 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) dismissed the appeal of the assessee, hence, the present appeal by the assessee.

The Id.Authorized Representative of the assessee submitted that the assessee has raised grounds challenging the validity of reopening as well as addition on merits. The Id.Authorized Representative of the assessee further submitted that at this stage, the assessee is only pressing grounds challenging the addition on merits. The addition made by the Revenue Authorities @12.5% on the alleged non-genuine purchases is over and above the normal profit of 11.13% declared by the assessee. The Assessing Officer has not rejected books of account and has not raised doubt over GP declared by the assessee.

3. On the other hand, Shri R. Bhoopathi, representing the Department vehemently defended the impugned order. The Id.Departmental Representative submitted that the Assessing Officer and CIT(A) has estimated GP @12.5% in line with the decision of Hon'ble Gujarat High Court in the case

of CIT vs. Simit P. Sheth,356 ITR 451. The Id.Departmental Representative prayed for upholding the impugned order and dismissing the appeal of assessee.

4. Both sides heard. Orders of authorities below perused. The assessee made purchases to the tune of Rs.40,51,270/- from the hawala dealers. The Assessing Officer estimated the GP at 12.5% on the alleged bogus purchases. The CIT(A) has upheld the same. Before the Tribunal, assessee assailed GP estimated by the authorities below on alleged bogus purchases is very much on the higher side and is over and above the GP declared by the assessee. The GP declared by the assessee i.e. 11.13%, has not been doubted by the Revenue. At the same time it is observed that the assessee has not been able to discharge his onus of proving genuineness of the purchase transactions. The assessee could neither produce the vendors nor the assessee could show trail of goods by providing supporting documents viz. Delivery challans, transport receipts, octroi receipts, etc. Since, the sales declared by assessee have not been doubted by the Assessing Officer, the assessee making purchases from grey market and thereafter obtaining purchase bills from hawala dealers cannot be ruled out. Under such situation it is only the profit element embedded in bogus purchases that has to be brought to tax. Taking into consideration entirety of facts, I deem it appropriate to modify the impugned order by adopting GP rate of 11.13% (as declared by the assessee) on alleged bogus purchases as well. The appeal of the assessee is partly allowed in the terms aforesaid.

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

Order pronounced in the open court on Friday the 13th day of March, 2020.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 13/03/2020

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
Mumbai

ITAT,