



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.7144/Mum./2018
(Assessment Year : 2010-11)

Tejdeep Steels
74, Bhandari Street
1st Kumbharwada
Mumbai 400 004
PAN-AABFT9449F

..... Appellant

v/s

Income Tax Officer
Ward-19(3)(5), Mumbai

..... Respondent

Assessee by : Shri Vimal Kumar Sethia
Revenue by : Ms. R. Kavitha

Date of Hearing - 19.02.2020

Date of Order - 13.03.2020

ORDER

The captioned appeal has been filed by the assessee challenging the order dated 15th May 2018, passed by the learned Commissioner of Income Tax (Appeals)-2, Mumbai, for the assessment year 2010-11.

2. The dispute in the present appeal is confined to the addition of ₹ 8,88,847, made on account of non-genuine purchases.

3. The assessee had also raised certain legal issues relating to violation of principles of natural justice as well as validity of re-

opening of assessment year under section 147 of the Act. However, at the time of hearing learned Authorised Representative has not advanced any argument with regard to the aforesaid grounds and has restricted his argument on the merits of the issue. Therefore, grounds no.1 and 2, raise by the assessee are treated as not pressed, hence, dismissed.

4. As regards the merits of the issue, brief facts are, the assessee, a partnership firm, is engaged in the business of trading in ferrous and non-ferrous metals. For the assessment year under dispute, the assessee filed its return of income on 25th September 2010, declaring total income of ₹ 82,976. Initially, the return of income filed by the assessee was processed under section 143(1) of the Act. Subsequently, on the basis of information received from the Sales Tax Department, Government of Maharashtra through the office of the DGIT (Inv.), Mumbai, that the assessee is a beneficiary of accommodation entries provided by certain entities identified as a hawala operators by the Sales Tax Department, the Assessing Officer re-opened the assessment under section 147 of the Act. In the course of the assessment proceedings, the Assessing Officer called upon the assessee to prove genuineness of purchases amounting to ₹71,10,781 claimed to have been made during the year from six entities. Further, to independently verify the genuineness of such purchases, the

Assessing Officer issued notices under section 133(6) of the Act to the concern parties which, as alleged by the Assessing Officer, returned back unserved. After perusing the submissions made by the assessee, the Assessing Officer was of the view that the assessee had failed to prove the genuineness of purchases as the assessee could only furnish the purchase bills and no other evidences could be furnished. Further, he observed, the purchase price shown in the purchase bills cannot be accepted as such price might have been inflated. Thus, ultimately, he treated the purchases made by the assessee to be non-genuine. However, relying upon certain judicial precedents, he ultimately concluded that only the profit embedded in such purchases has to be considered for addition. Accordingly, applying the profit rate of 12.5% on the disputed purchases of ₹ 71,10,781, he disallowed an amount of ₹ 8,88,847, and added back to the income of the assessee. The aforesaid addition was also confirmed by learned Commissioner (Appeals).

5. The learned Authorised Representative submitted, the assessee has already declared a gross profit rate of 10.72%, hence, further disallowance @ 12.5% would push the gross profit rate to almost 24%, which is unimaginable in the nature of business carried on by the assessee. He submitted, while deciding identical issue in assessee's own case for the assessment year 2011-12, the Tribunal in similar

facts and circumstances has restricted the disallowance to 5% of the non-genuine purchases. Thus, he submitted, in the impugned assessment year also the disallowance should be restricted to 5% of the non-genuine purchases.

6. The learned Departmental Representative relied upon the observations of the Assessing Officer and the learned Commissioner (Appeals).

7. I have considered rival submissions and perused the material on record. It is evident, though, the Assessing Officer has treated purchases as non-genuine, however, ultimately he has proceeded to make disallowance by applying the profit rate embedded in such purchases. In the process, he has estimated the profit rate @ 12.5%. It is not disputed that the assessee is a trader in ferrous and non-ferrous metals, wherein, as per market norms the profit rate is in the range of 4% to 5%. It is also a fact on record that the assessee in the impugned assessment year has declared a gross profit rate of 10.72%. Further, it is noticed that while deciding identical issue in assessee's own case in assessment years 2009-10 and 2011-12 vide ITA no.4339 and 4340/Mum./2018, dated 25th June 2019, the Co-ordinate Bench has restricted the addition to 5% of the non-genuine purchases. Facts being more or less identical, respectfully following the aforesaid decision of the Co-ordinate Bench in assessee's own case, I direct the

Assessing Officer to restrict the addition to 5% of the non-genuine purchases. Grounds raised by the assessee are partly allowed.

8. In the result, appeal is partly allowed.

Order pronounced in the open Court on 13.03.2020

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 13.03.2020

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai