

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

**BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA Nos. 5397/Mum/2019 &
1183 & 1184/Mum/2020**

(Assessment Years: 2009-10, 2010-11 & 2011-12)

Shri Chogaram H Devasi, Office No. 105, 1 st Floor, 39/41 Parankruti Bldg, 4 th Kumbharwada, Mumbai PIN – 400 004.	बनाम/ Vs.	ITO 19(1)(3) Matru Mandir Tardeo, Mumbai – 400 007.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHPD0123E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	None
प्रत्यर्थी की ओर से/Respondent by :	Shri Amit Pratap Singh, DR

सुनवाई की तारीख / Date of Hearing	09/09/2020
घोषणा की तारीख /Date of Pronouncement	14/09/2020

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

These are the appeals filed by the assessee against the separate orders of the Ld Commissioner of Income Tax (Appeals)-7, Mumbai for the A.Y. 2009-10 passed u/sec143(3) r.w.s 147 r.w.s 250 of the Act and for the A.Y.s 2010-11 & 2011-12 passed u/s 144

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r.w.s 147 r.w.s 250 of the Act. Since, all these appeals have common and identical issues, hence are clubbed and consolidated order is passed. For the sake of convenience, we shall take up the assessee appeal ITA No. 5397/Mum/2019 for the A.Y 2009-10 and the facts narrated therein. None appeared on behalf of the assessee; we have considered the submissions of the Ld.DR and material on record and heard the appeal. The assessee has raised the following grounds of appeal:

- 1. The Ld. Commissioner of income tax has erred in confirming the addition of Rs. 15,54,690/- being the amount calculated at 12.5% of the so called Bogus Hawala Purchases.*
- 2. The order appealed against is bad in law and is against the principle of natural justice.*
- 3. The order appealed against is based on surmises and conjectures.*
- 4. Your Petitioner reserves the right to add, to delete and / or amend any of the foregoing grounds.*

2. The brief facts of the case are that the assessee is an individual and is engaged in the business of trading in ferrous and Non ferrous metals and has filed the return of income on 29.09.2009 with total

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income of Rs. 4,13,820/-.The return of income was processed u/s 143(1) of the Act. In the course of business of trading in ferrous and non-ferrous metals the assessee has made purchases to the extent of Rs. 1,23,57,521/- from the tainted list of parties mentioned in the website of Maharashtra Sales Tax Department, who have issued the false bills and involved in bogus transactions. Further the parties who have issued bills are not traceable and the A.O has listed the names of the parties at page No. 2 of the order, which is read as under:

“Details of the parties who have issued accommodation bills to the assessee are as under:

<i>Sr. No.</i>	<i>Name of the parties</i>	<i>FY</i>	<i>Amount</i>
<i>1</i>	<i>Adhunik Steel Corp.</i>	<i>2008-09</i>	<i>7175105</i>
<i>2</i>	<i>Prakash Steel India</i>	<i>2008-09</i>	<i>423636</i>
<i>3</i>	<i>Vinayak Sales Corp</i>	<i>2008-09</i>	<i>204173</i>
<i>4</i>	<i>Bhavani Impex (India)</i>	<i>2008-09</i>	<i>4554607</i>

3. Whereas, the AO has reason to believe that income has escaped assessment due to action of the assessee in obtaining the bogus bills and therefore issued notice u/s 148 of the Act. In response to the notice the assessee filed a letter dated 24.03.2014 with the copy of return of income for the A.Y 2009-

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10. Subsequently A.O issued notices u/s 143(2) and 142(1) of the Act on 26.12.2014 and also the reasons recorded for reopening of the case was provided to the assessee. In response to the notice the Ld. AR of the assessee appeared from time to time and filed details and the case was discussed. The AO found that the dealers/parties who have issued the bills without delivery of goods are not traceable and they are only engaged in providing accommodation of bills. Further AO called for the information referred at page 2 para -6 of the order which is read as under:

“6. Based on the information, an independent inquiry was made by the undersigned and further details were called for from the assessee as per notice u/s 142(1) dated 26.12.2014. The assessee was asked to produce certain details and also the purchases from those parties as per Annexure – A.

- (a) Name of the Seller with current full address*
- (b) PAN*
- (c) Bill and voucher No. with date*
- (d) Description of goods purchased*
- (e) Quantity*
- (f) Rate*
- (g) Amount*
- (h) Goods dispatched from (name of the place) with date*

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(i) Mode of transportation, if by road vehicle No. and also payments, detailed in the annexure – A”.

4. Whereas, the A.O on perusal of the details submitted by the assessee observed that the purchases made by the assessee are not genuine and also there is ambiguity in the correctness and the completeness of the books of accounts maintained and finally invoked the provisions of Sec. 145(3) of the Act and rejected the books of accounts. Since, the assessee has used the accommodation bills from parties to reduce the tax liability, the A.O has considered the profit element on purchases and made addition of Rs15,44,690/- being 12.5% of the non genuine purchases and assessed the total income of Rs. 19,58,510/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 18.03.2015. Aggrieved by the assessment order, the assessee has filed an appeal with the CIT(A).

5. Whereas, the Ld. CIT(A) has issued the notices of hearing to the assessee on various dates, but in spite of providing opportunity, none appeared on behalf of the assessee but only the adjournment letters were

filed. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte. Aggrieved by the order of the CIT(A), the assessee has filed an appeal with the Tribunal.

6. At the time of hearing, none appeared on behalf of the assessee nor any adjournment petition was filed. We heard the submissions of the Ld. DR and perused the material on record. We find that there is no response from the assessee to substantiate the claims in the appellate proceedings before Ld CIT(A). Further, the assessee for various reasons could not have appeared before the CIT(A) and can be due to non availability of details at that point of time in the appellate proceedings. Therefore, we considering the principles of natural justice, provide one more opportunity of hearing to the assessee to substantiate the case with evidences before the appellate authorities. Accordingly, we set aside the order of CIT(A) and restore the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing

and shall cooperate in submitting the information for early disposal of appeal and we allow the grounds of appeal of the assessee for statistical purposes.

ITA Nos. 1183 & 1184/Mum/2020, A.Y 2010-11 & 2011-12:

7. In both the assessment years, the A.O has made Best judgment assessment u/s 144 r.w.s 147 of the Act and passed order on 29.02.2016. Against the orders of the A.O, the assessee has filed appeals with the CIT(A).

8. Whereas the Ld.CIT(A) observed that the assessee has filed the appeals manually in paper forms but as per the amendment and procedure laid down under Rule 45 & 46 of Income Tax Rules, 1962 w.e.f 01.03.2016 the appeals in Form no 35 have to be filed electronically. Since the assessee has filed the appeal in paper form on 05.04.2016, the Ld.CIT(A) has treated the Appeals as nonest and dismissed,

9. The Ld. DR submitted that the assessee should mandatorily file the appeals electronically.

10. We heard the ld. DR and perused the material available on record. The sole crux of the disputed issue in these appeals is that the assessee has filed the appeals in paper form on 05.04.2016. We find as per the amendment and procedure laid down under Rule 45 & 46 of Income Tax Rules, 1962 w.e.f 01.03.2016, the appeals in Form no 35 have to be filed electronically. Whereas the assessee has filed in paper form on 05.04.2016, probably he is not aware of the technicalities in filing the appeal electronically therefore, the appellate authority has treated the appeals as nonest and dismissed. We considering the fact of technicalities in filing the appeal electronically and the amendment is effective from 01.03.2016. Accordingly, to meet the ends of justice, we set aside the order of the CIT(A) and restore the disputed issue to the file of the CIT(A) to adjudicate afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and comply with appeal filling Rules for early disposal of appeal

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and allow the grounds of appeal of the assessee for statistical purposes.

11. In the result, the three appeals of the assessee are treated as allowed for statistical purposes.

The order pronounced on 14.09.2020, in the open court.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMEBR

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 14 /09/2020

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai