

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'G' BENCH MUMBAI**

BEFORE SHRI JUSTICE P P BHATT, PRESIDENT

&

SHRI M. BALAGANESH, AM

**ITA No.1305/Mum/2018
(Assessment Year :2009-10)**

M/s. Hellios Tubealloys Pvt. Ltd., (Formerly known as SLS Tubes Pvt. Ltd., 43, 1 st Carpenter Street, C.P.Tank, Mumbai-400004 Maharashtra India	Vs.	DCIT, Central Circle-2(3) Mumbai, 8 th Floor old CGO Annexure Building, M.K.Road, Marine Lines Mumbai – 400 020
PAN/GIR No. AALCS1837M		
(Appellant)	..	(Respondent)

**ITA No.1382/Mum/2018
(Assessment Year :2009-10)**

Joint Commissioner of Income Tax (OSD) Central Circle-2(3), Room No.803, 8 th Floor, Old CGO Annex Building M.K.Road, Mumbai – 400 020	Vs.	M/s. Hellios Tubealloys Pvt. Ltd., (Formerly known as SLS Tubes Pvt. Ltd., 43, 1 st Carpenter Street, C.P.Tank, Mumbai-400004 Maharashtra India
PAN/GIR No. AALCS1837M		
(Appellant)	..	(Respondent)

**ITA No.1304/Mum/2018
(Assessment Year :2009-10)**

M/s. SLS Stainless Pvt Ltd., 43, 1 st Carpenter Street C.P.Tank, Mumbai – 400 004 Maharashtra	Vs.	DCIT, Central Circle-2(3) Mumbai, 8 th Floor old CGO Annexure Building, M.K.Road, Marine Lines Mumbai – 400 020
PAN/GIR No. AADCS1273P		
(Appellant)	..	(Respondent)

ITA No.1383/Mum/2018
(Assessment Year :2009-10)

Joint Commissioner of Income Tax (OSD) Central Circle-2(3), Room No.803, 8 th Floor, Old CGO Annex Building M.K.Road, Mumbai – 400 020	Vs.	M/s. SLS Stainless Pvt Ltd., 43, 1 st Carpenter Street, C.P.Tank, Mumbai-400004 Maharashtra India
PAN/GIR No. AADCS1273P		
(Appellant)	..	(Respondent)

Assessee by	Shri Bharat Kumar
Revenue by	Shri Vinod Kumar
Date of Hearing	28/09/2020
Date of Pronouncement	21/10/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA Nos.1305/Mum/2018, 1382/Mum/2018, 1304/Mum/2018 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No.CIT(A)-48/IT-194/DCCC-2(3)/2015-16 & CIT(A)-48/IT-193/DCCC-2(3)/2015-16 respectively dated 15/12/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) rws 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/03/2015 by the Id. Dy. Commissioner of Income Tax-CC-2(3)(hereinafter referred to as Id. AO).

2. The grounds raised by the assessee challenging the validity of reopening of assessment and with regard to non-granting of opportunity of cross examination to the assessee in respect of statement recorded from alleged hawala dealer were stated to be not pressed by the Id. AR at the time of hearing. The same is reckoned as a statement made from the Bar and accordingly, the grounds raised in this regard are dismissed as not pressed.

3. The only ground to be decided in these appeals is with regard to the issue of addition made on account of bogus purchases u/s.69C of the Act.

4. With the consent of both the parties, the appeals in the case of SLS Stainless Pvt. Ltd., in ITA No.1304/Mum/2018(Assessee appeal) and ITA No.1383/Mum/2018 (Revenue appeal) are taken up for adjudication herein and the decision rendered thereon would apply with equal force for Hellios Tubealloys Pvt Ltd (formerly SLS Tubes Pvt. Ltd.,) in ITA No.1305/Mum/2018(Assessee appeal) and 1382/Mum/2018 (Revenue appeal) except with variance in figures.

5. We have heard rival submissions and perused the materials available on record. We find that assessee is engaged in the business of trading of ferrous and non-ferrous metals. A survey u/s.133A of the Act was conducted in the business premises of the assessee on 26/03/2013 wherein, it came to light that assessee had made certain purchases from certain tainted parties whose names appear as hawala dealers in the website of Sales Tax department of Government of Maharashtra. After confronting the aforesaid information obtained from the Sales Tax department to the assessee, the Id. AO called upon the assessee to prove the genuineness of the purchases. The Id. AO issued notice u/s.133(6) of

the Act to the concerned suppliers, for which, as alleged by the Id. AO, no reply was received. We find that the Id. AO had also directed the assessee to produce the concerned parties which was not done by the assessee. Accordingly, the Id. AO concluded that assessee could not prove the genuineness of the purchases with supporting evidences and proceeded to treat the purchase made from the tainted suppliers amounting to Rs.12,17,90,776/- as unexplained expenditure u/s.69C of the Act by observing that assessee had made purchases from grey market and source of payments for the same remain unexplained. It is pertinent to note that the Id. AO had in para 8 of his assessment order had mentioned that assessee had obtained accommodation bills to prove that such purchases to match the quantity of sales shown. This goes to prove that the Id. AO had not disputed the sales made out of the corresponding purchases.

5.1. We find that Id. CIT(A) after considering the submissions of the assessee and the materials available on record restricted the addition to 25% of the alleged bogus purchases which worked out to Rs.3,04,47,694/-.

5.2. Aggrieved, both the assessee as well as revenue are in appeal before us.

6. At the outset, the Id. AR stated that this issue is already decided by this Tribunal in assessee's own case for A.Y.2011-12 in ITA No.3376/Mum/2016 dated 02/02/2018. The operative portion of the said order is reproduced hereunder:-

“5. We have considered rival submissions and perused the material on record. At the outset, learned Authorized Representative submitted before us that while considering assessee’s appeal on identical issue of estimation of profit on alleged bogus purchases for the very same assessment year the Tribunal in ITA no.3189/Mum./2016, though, upheld the estimation of profit on alleged bogus purchases @ 12.5%, however, directed the Assessing Officer to reduce the gross profit already declared by the assessee from the profit to be estimated at 12.5% of the bogus purchases. The learned Departmental Representative also agreed with the aforesaid submissions of the assessee. As could be seen from the material on record, while deciding assessee’s appeal arising out of the impugned order of the learned Commissioner (Appeals) the Tribunal has directed the Assessing Officer to adopt the profit rate on alleged bogus purchases @ 12.5% and thereafter reduce the gross profit already declared by the assessee to quantify the disallowance on account of alleged bogus purchases. In view of the aforesaid decision of the Co-ordinate Bench on identical issue, we do not find any reason to deviate from the view taken therein. Accordingly, ground raised by the Revenue is dismissed.”

6.1. Respectfully following the same, we direct the Id. AO to adopt the profit percentage @12.5% minus gross profit already declared by the assessee with regard to the disputed purchases. No arguments by way of any contrary decisions were submitted by the Id. DR before us with regard to the impugned issue. Accordingly, the grounds raised by the assessee as well as by the revenue on merits are disposed off in the aforesaid manner.

7. In the result, both the appeals of the assessee and revenue are partly allowed.

Order pronounced on 21/10/2020 by way of proper mentioning in the notice board.

Sd/-
(JUSTICE P P BHATT)
PRESIDENT

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 21/10/2020

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai