

आयकर अपीलीय अधिकरण
मुंबई पीठ “ सी ”, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “C”, MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नवीन कुमार प्रधान, लेखा सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI N.K.PRADHAN, ACCOUNTANT MEMBER
आअसं. 2226/मुं/2017 (नि.व.2009-10)
ITA NO.2226/MUM/2017(A.Y.2009-10)

M/s. PCK Metals Pvt. Ltd.,
Shop No.1, Kushal Bhavan65,
5th Kumbharwada, Mumbai – 400 004.
PAN: AADCP88653Q

..... अपीलार्थी /Appellant

बनाम Vs.

The DCIT -15(2)(2),
Mumbai

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Shri V.Sreekar

सुनवाई की तिथि/ Date of hearing : 29/10/2020

घोषणा की तिथि/ Date of pronouncement : 12/11/2020

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-10, Mumbai (in short ‘the CIT(A)’) dated 20/12/2016 for the assessment year 2009-10.

2. The brief facts of the case as emanating from records are : The assessee is a trader in ferrous and non-ferrous metals. The assessment for assessment year 2009-10 in the case

of assessee was reopened on the basis of information received from CIT (Central)-1, Mumbai that the assessee has indulged in availing accommodation entries to the tune of Rs.1,32,32,807/- from hawala traders. In assessment proceedings the Assessing Officer after recording that the assessee has failed to produce the parties from whom alleged purchases were made and assessee's failure to produce vital documents viz. Stock register and books of account leads to the fact that purchases were not genuine. Thus, the Assessing Officer made addition of the entire alleged bogus purchases under section 69 of the Income Tax Act, 1961 (in short 'the Act').

The Assessing Officer further made disallowance of interest amounting to Rs.12,79,434/- on the ground that the assessee had advanced interest bearing funds to its sister concern M/s. Prakash Stainless Steel Pvt. Ltd. without charging any interest.

3. Aggrieved by the assessment order dated 30/03/2015 passed under section 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A). In first appellate proceedings, the CIT(A) in principle accepted the findings of Assessing Officer in holding that the assessee has indulged in obtaining bogus purchase bills from hawala dealers. However, CIT(A) restricted the disallowance by estimating GP @ 12.5% on bogus purchases. As regards disallowance of interest, the CIT(A) upheld the findings of Assessing Officer in the absence of any contrary material.

4. Now the assessee is in appeal against the order of CIT(A) assailing the additions on merits as well as challenging the validity of reopening.

5. Shri V.Sreekar, representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. Departmental Representative submitted that the assessee has failed to prove genuineness of the purchases. The CIT(A) has granted relief to the assessee by estimating G.P @ 12.5% on bogus purchases. The estimation of G.P by CIT(A) is fair and reasonable. As regards disallowance of interest expenditure, the Id. Departmental Representative submitted that the assessee has failed to substantiate that the funds advanced to sister concern were for business purpose. Further, the assessee failed to show that the loan to sister concern was advanced from own non-interest bearing funds.

6. We have heard the submissions made by the Id. Departmental Representative and have examined the orders of authorities below. In ground No.1 of the appeal the assessee has assailed reopening of assessment. The assessee has assailed the reopening before the CIT(A). No contrary material is available on record to rebut the findings of CIT(A). We find no reason to interfere with the order of CIT(A) on this issues. Accordingly, ground No.1 of the appeal is dismissed being devoid of any merit.

7. In ground No.2 of the appeal, the assessee has assailed disallowance made on bogus purchases by estimating GP at 12.5%. As per the contentions of the assessee, the assessee had furnished confirmations with PAN of the alleged hawala operators. It is contended that no independent enquiry was made by the Assessing Officer . In the absence of proper verification, the purchases cannot be treated as non-genuine.

Though payment for the goods purchased were made through banking channels, but mere making payment through cheque does not conclusively prove genuineness of the transaction. The assessee has failed to produce parties from whom purchases were made. Further the assessee failed to produce the documents viz. lorry receipts, octroi receipts, etc. to prove trail of goods. In short, the assessee could not prove genuineness of the purchases. At the same time we observe that the sales and the stock declared by the assessee were accepted by the Assessing Officer. Without purchases there cannot be sales. The CIT(A) in the impugned order has observed that under such like transactions the assumption is that assessee might have purchased the material from grey market and had obtained bogus purchase bills from entry providers. It is only the profit element embedded in such like bogus transaction that has to be brought to tax. The CIT(A) has estimated GP @ 12.5% on bogus purchases. The assessee is in the business of trading of ferrous and non-ferrous metals. The estimation of GP by CIT(A) is on the higher side. The GP in the trade of ferrous and non-ferrous metals is generally around 4% to 6%. In our considered view the ends of justice would meet if the GP on bogus purchases be estimated at 6%. We hold and direct accordingly. The ground No.2 of the appeal is partly allowed in the terms aforesaid.

8. In ground No.3 of the appeal, the assessee has assailed disallowance on interest under section 36(1) (iii) of the Act. The assessee has allegedly advanced interest bearing funds to its sister concern M/s. Prakash Stainless Steel Pvt. Ltd. without charging any interest. It is not emanating from records whether the assessee was having own sufficient funds for advancing of loans to its sister concern. The assessee has submitted that the advances have been given in connection with business. However, we find that there is no reference to the material by authorities below that have been placed on record by the assessee to substantiate that the advances were in respect of business transactions. In the absence of complete facts and reference to material brought on record by assessee, we deem it appropriate to restore this issue back to the file of Assessing Officer for fresh adjudication. While deciding this issue, the Assessing Officer shall also consider the applicability of decision rendered in the case of CIT vs. Reliance Utility Power Ltd. reported as 313 ITR 340(Bom).

9. In the result, appeal of the assessee is partly allowed in the terms aforesaid.

Order pronounced in open Court on Thursday the 12th day of November, 2020.

Sd/-

(N.K.PRADHAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 12 /11/2020

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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai