

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी"
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 2294/मुं/2019 (नि.व.2010-11)
ITA NO. 2294/MUM/2019 (A.Y.2010-11)

M/s.Dhanera Metal Supply Corporation,
424, 4th Floor, B-Wing, Plaza Panchshil,
N.S.Patkar Marg, Gamdevi,
Grant Road, Mumbai 400 007
PAN: AAAFD3399K

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

The Asstt. Commissioner of Income-tax- 19(1),
Room No.203, 2nd Floor, Matru Mandir,
Mumbai 400 007

: प्रत्यर्थी/ Respondent

Assessee by : None
Revenue by : Shri Ajay Pratap Singh

सुनवाई की तारीख/ : 12/10/2020
Date of Hearing
घोषणा की तारीख / : 16/12/2020
Date of Pronouncement

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-29, Mumbai (in short 'the CIT(A)') dated 20/02/2019 for the assessment year 2010-11.

2. The brief facts of the case as emanating from records are : The assessee - firm is engaged in trading of ferrous and non-ferrous metals. The assessee filed its return of income for the impugned assessment year on 17/08/2020 declaring total

income of Rs.23,69,402/-. The return of the assessee was processed under section 143(1) of the Income Tax Act, 1961 (in short 'the Act'). On the basis of information received from Sales Tax Department, Government of Maharashtra by the Director General of Income Tax (Investigation), Mumbai the assessment in the case of assessee for assessment year 2010-11 was reopened. As per the information received, the assessee had obtained bogus purchase bills amounting to Rs.1,22,60,523/- from Shree Sundha Steels Pvt. Ltd., a declared hawala dealer. The Assessing Officer in reassessment proceedings made addition of Rs.15,32,565/- i.e. 12.5% of the alleged bogus purchases. Aggrieved by the assessment order dated 19/02/2016 passed under section 143(3) r.w.s 147 of the Act, the assessee filed appeal before the CIT(A) challenging reopening, as well as addition on merits. The CIT(A) after considering the contentions raised by the assessee dismissed the appeal in toto. Hence, the present appeal by the assessee.

3. Shri Ajay Pratap Singh, representing the Department vehemently defended the impugned order. The Id. Departmental Representative submitted that the assessee had obtained bogus purchase bills from declared accommodation entry provider. The authorities below were fair and justified in making addition to the extent of profit embedded in the bogus transactions. The Id. Departmental Representative placed reliance on the decision in the case of Simit P. Sheth, 356 ITR 461 (Guj) and prayed for dismissing the appeal of assessee.

4. Submissions made by Id. Departmental Representative heard, orders of authorities below examined. The assessee in its appeal has primarily raised two issues, i.e. (i) Against reopening of assessment; and (ii) Adhoc addition of Rs.15,32,565/- i.e. 12.5% of alleged bogus purchases.

5. In so far as ground No. 1 of the appeal is concerned, the CIT(A) has dealt with this issue in detail and has rejected the contentions of the assessee against reopening. In the absence of any contrary material on record, I concur with the findings of CIT(A) on this issue. Accordingly, ground No.1 of the appeal is dismissed.

6. The ground No.2 of the appeal is against addition made on account of bogus purchases. During the assessment proceedings, the assessee had filed various documents viz. Bank statement, stock register and original invoices to prove the genuineness of the purchases. However, we observe that no documents were furnished by the assessee to show trail of goods. Mere payments made through cheque/banking channels are not sacrosanct and hence, cannot be taken as proof of genuineness of the transaction. The Hon'ble Bombay High Court in the case of PCIT vs. Mohammad Haji Adam & Co, in Income Tax Appeal No.1004 of 2016 decided on 11/02/2019 has held that where the entity has been found to have engaged in obtaining bogus purchase bills, it is only the profit element embedded in such bogus transactions that has to be brought to tax. The addition be made to the extent of G.P rate on purchases at the same rate of other genuine purchases. The ground No.2 of the appeal is restored to Assessing Officer for recomputation of G.P on bogus purchases in line with the decision of Hon'ble Jurisdictional High Court (supra). The Assessing Officer shall grant reasonable opportunity of hearing to the assessee and shall allow the assessee to produce relevant records to show G.P earned during the relevant period. Consequently, the ground No.2 of the appeal is allowed for statistical purposes in the terms aforesaid.

7. In the result, appeal by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on Wednesday the 16th day of December, 2020.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 16/12/2020
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