

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. 2390 /मुं/2019 (नि.व.2011-12)
ITA NO. 2390/MUM/2019 (A.Y.2011-12)
आअसं. 2391 /मुं/2019/(नि.व.2010-11)
ITA NO. 2391/MUM/2019 (A.Y.2010-11)
आअसं. 2392 /मुं/2019/(नि.व.2009-10)
ITA NO. 2392/MUM/2019 (A.Y.2009-10)

Dinesh T. Bhansali,
2/27,Shiv Sadan, 154/156,
3rd Kumbharwada, Mumbai 400004
PAN:AFAPB5917L

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

Income Tax Officer – 19(1)(4),
Room No.222,2nd Floor, Matru Mandir,
Tardeo Road,Mumbai 400 007

: प्रत्यर्थी/ **Respondent**

Assessee by : Shri Jitendra Singh
Revenue by : Shri Ajay Pratap Singh
सुनवाई की तारीख/
Date of Hearing : 13/10/2020
घोषणा की तारीख /
Date of Pronouncement : 08/01/2021

आदेश/ ORDER

These three appeals by the assessee are directed against orders of Commissioner of Income Tax (Appeals)-54, Mumbai (in short 'the CIT(A)') for the assessment year 2011-12, 2010-11 and 2009-10, respectively. Impugned orders for assessment years 2011-12 and 2010-11 are dated 22/01/2018 and for assessment

year 2009-10 is dated 05/01/2018. Since, these appeals emanate from same set of facts and the issues raised in all the three appeals are identical, these appeals are taken up together for adjudication and are decided vide this common order.

2. The facts are narrated from the appeal of the assessee in ITA No.2392/Mum/2019 for assessment year 2009-10. The brief facts of the case as emanating from records are: The assessee is a trader in ferrous and non-ferrous metals. Information was received from Sales Tax Department, Government of Maharashtra by DGIT(Inv.), Mumbai that during the period relevant to the assessment year 2009-10 the assessee has obtained bogus purchase bills amounting to Rs.80,82,203/- from various hawala dealers. On the basis of information received, assessment for assessment year 2009-10 was reopened. Notices under section 143(2) r.w.s. 142(1) of the Income Tax Act, 1961 (in short 'the Act') were issued to the assessee. Despite service of notices the assessee failed to appear before the Assessing Officer. The Assessing Officer after examining the documents on record and information available made addition of Rs.12,12,330/- by estimating GP on non-genuine purchases @15%. Aggrieved by the assessment order dated 16/03/2015 passed under section 144 r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A) challenging the addition made in respect of bogus purchases. The CIT(A) after examining the facts of the case and considering the submissions of the assessee restricted the addition to 12.5% of the bogus purchases. Still aggrieved, the assessee is in appeal before the Tribunal.

3. The assessee in appeal before the Tribunal has assailed reopening of assessment as well as addition confirmed by the CIT(A) in respect of alleged bogus purchases.

4. Shri Jitendra Singh, appearing on behalf of the assessee submitted that he is not pressing the ground challenging the reopening of assessment. In respect of adhoc additions on bogus purchases the Id.Authorized Representative of the

assessee submitted that estimation of GP by CIT(A) at 12.5% is on the higher side. The GP ratio declared by the assessee for the impugned assessment year is 5.42%. The Id. Authorized Representative of the assessee further submitted that in the preceding assessment year i.e. assessment year 2008-09 the GP was 4.9% and prior to that in assessment year 2007-08 when the business was conducted under partnership firm the GP was 3.44%. The Id. Authorized Representative of the assessee submitted that the addition may be restricted on bogus purchases to the extent GP rate declared by the assessee.

5. On the other hand, Shri Ajay Pratap Singh, representing the Department vehemently defended the impugned order and prayed for confirming the order of CIT(A). The Id. Departmental Representative submitted that the CIT(A) has granted relief to the assessee by reducing the disallowance on bogus purchases from 15% to 12.5%.

6. Both sides heard, orders of authorities below examined. The assessee has obtained bogus purchase bills to the tune of Rs.80,80,203/- from declared hawala dealers. The Assessing Officer estimated GP on such bogus purchases @15%. In first appeal, the CIT(A) restricted the addition to 12.5%. A perusal of submissions made by assessee before CIT(A) reveal that GP ratio declared by the assessee during assessment year 2009-10 is 5.42%. Taking into consideration entirety of facts I am of the considered view that adhoc addition made by CIT(A) at 12.5% is on higher side. The GP in the trade of ferrous and non-ferrous metal is generally between 5 to 8%. The ends of justice would meet if the addition is restricted to 7.5%. I hold and direct accordingly. The ground No.3 of the appeal is partly allowed in the aforesaid terms.

7. The grounds No.1 and 5 of the appeal are general in nature and hence, require no adjudication.

8. In ground No.2 of the appeal, assessee has assailed reopening of assessment under section 147 of the Act. The Id.Authorized Representative of the assessee has not pressed ground No.2, accordingly the same is dismissed as not pressed.

9. In ground No.4 of the appeal assessee has assailed levy of interest under section 234A, 234B and 234C of the Act. The charging of interest under section 234A, 234B and 234C of the Act are consequential and mandatory, accordingly, ground No.4 of the appeal is dismissed.

10. In the result, appeal of assessee for assessment year 2009-10 is partly allowed.

ITA Nos.2390 &2391/Mum/2019, A.Ys 2011-12 & 2010-11

11. The facts in both these appeals are similar to the facts in ITA No.2392/Mum/2019 for assessment year 2009-10, except for the amounts of bogus purchases. The quantum of bogus purchases for impugned assessment years is as under:

Assessment Year	Amount of bogus purchases
2010-11	Rs.56,00,057.00
2011-12	Rs.32,29,798.00

12. In both the impugned assessment years the Assessing Officer made adhoc disallowance of 15% on non-genuine purchases and the CIT(A) restricted it to 12.5%. The GP declared by the assessee in assessment year 2010-11 is 5.15% and in assessment year 2011-12 is 3.23%. For parity of reasons given while adjudicating the appeal of assessee in assessment year 2009-10, the GP is restricted to 7.5% in the present assessment years as well. As a result, ground No.3 raised in the respective appeals is partly allowed in the terms aforesaid.

13. In both the above appeals the assessee has challenged the reopening of assessment. Since this ground has not been pressed by the Id.Authorized Representative of the assessee, the ground No.2 in both the appeals is dismissed as not pressed.

14. The ground No.4 in both the appeals in respect of charging of interest 234A, 234B and 234C of the Act. The charging of interest under section 234A, 234B and 234C of the Act are consequential and mandatory, consequently, ground No.4 of the appeal is dismissed.

15. In the result, appeals for assessment year 2010-11 and 2011-12 are partly allowed in the terms aforesaid.

16. To sum up, all three appeals by the assessee are partly allowed.

Order pronounced in the open Court on Friday, the 8th day of January, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 08/01/2021

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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

ITAT, Mumbai