

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. 2505 /मुं/2019 (नि.व.2009-10)
ITA NO. 2505/MUM/2019 (A.Y.2009-10)
आअसं. 2506 /मुं/2019 (नि.व.2011-12)
ITA NO. 2506/MUM/2019 (A.Y.2011-12)

Shri Jabarmal Jain,
10, Silver Cinema Building,
Khetwadi Back Road, Mumbai 400 004
PAN: AACPJ6505F

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

Income Tax Officer 19(2)(1),
2nd Floor, Matru Mandir Building,
Grant Road, Mumbai 400 007

: प्रत्यर्थी/ Respondent

Assessee by : None
Revenue by : Shri Ajay Pratap Singh
सुनवाई की तारीख/
Date of Hearing : 15/10/2020
घोषणा की तारीख /
Date of Pronouncement : 11/01/2021

आदेश/ ORDER

These two appeals by the assessee are directed against the orders of Commissioner of Income Tax (Appeals)-4, Mumbai (in short 'the CIT(A)') for the assessment years 2009-10 and 2011-12, respectively. Both the impugned orders are of even date i.e. 28/03/2019. Since, the facts germane to both appeals are similar and the grounds raised in the appeals are identical these appeals are taken up together for adjudication and are decided by this common order.

2. For the sake of convenience the facts are narrated from appeal in ITA No.2505/Mum/2019 for the assessment year 2009-10. The brief facts as emanating from records are: The assessee is engaged in trading of ferrous and non-ferrous metals. The assessee filed his return of income for the impugned assessment year on 29/09/2009 declaring total income of Rs.3,59,530/-. The return of the assessee was processed under section 143(1) of the Income Tax Act,1961 (in short 'the Act'). Thereafter, on the basis of information received from Sales Tax Department, Government of Maharashtra by DGIT(Investigation), Mumbai the assessment for assessment year 2009-10 in the case of assessee was reopened. As per information received, the assessee has obtained bogus purchases bills amounting to Rs.22,54,556/- from M/s.Sunil Metal (India), a declared hawala dealer. In the course of reassessment proceedings the assessee was directed to produce documents to prove genuineness of the purchases. The assessee failed to furnish vital documents such as delivery challan, transport receipts, octroi receipts, inward register, stock register, etc. to prove trail of goods. Further, the assessee failed to produce the supplier of goods. Notice issued under section 133(6) of the Act, by the Assessing Officer was received back unserved. The Assessing Officer made addition of Rs.2,81,819/- by estimating GP@12.5% on total non-genuine purchases. Aggrieved by the assessment order dated 09/12/2016 passed under section 143(3) r.w.s. 147 of the Act, the assessee filed appeal before CIT(A). In first appeal, the assessee challenged reopening of assessment, as well as the addition on merits. The CIT(A) after examining the facts of the case and considering various case laws upheld the validity of reopening and addition made in assessment order. Now, the assessee is in second appeal before the Tribunal challenging the findings of CIT(A) on reopening of assessment under section 147 of the Act and the addition in respect of bogus purchases.

3. Shri Ajay Pratap Singh, representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id.

Departmental Representative submitted that no assessment in the case of assessee was made by the Assessing Officer hence, there was no formation of any opinion by the Assessing Officer. The CIT(A) in a very reasoned order has rejected assessee's challenge to reopening of assessment under section 147 of the Act . On merits of the addition the Id. Departmental Representative submitted that the assessee failed to prove genuineness of the purchases of goods and the supplier. The Assessing Officer was fair in estimating GP @ 12.5% on bogus purchases.

4. Submissions made by Id. Departmental Representative heard, orders of the authorities below examined. The assessee is engaged in trading of ferrous and non-ferrous metals. During the period relevant to the assessment year under appeal, the assessee has made purchases to the tune of Rs.22,54,556/- from declared hawala dealer. Undisputedly, the assessee could not prove genuineness of the purchases from the said dealer. Hence, the profit embedded in such bogus purchases was brought to tax by Assessing Officer by estimating GP at 12.5%. The same has been upheld by the CIT(A). I am of the considered view that keeping in view the nature of assessee's business, estimation of GP at 12.5% is on higher side. The GP rate in trading of ferrous and non-ferrous metals is generally between 5 to 8%. Taking into consideration entirety of facts estimation of GP at 6.5% on the total bogus purchases would be fair and meet the ends of justice. I hold and direct accordingly. Thus, the ground No.2 raised in the appeal is partly allowed, in the terms aforesaid.

5. In ground No.1 of appeal, the assessee has assailed reopening of assessment under section 147 of the Act . I have examined the findings of CIT(A) on this issue. In the absence of any contrary material I concur with the findings of first appellate authority. Consequently, ground No.1 raised in the appeal is dismissed.

6. In the result, appeal by the assessee is partly allowed.

ITA NO.2506/MUM/2019-2011-12:

7. In assessment year 2011-12 the facts are similar. The assessee has procured bogus purchase bills amounting to Rs.1,19,89,417/- from various hawala dealers. The Assessing Officer made addition by estimating GP at 12.5%. In first appeal, the assessee challenged reopening of assessment as well as the addition on merits. The CIT(A) dismissed the appeal of assessee in toto.

8. Since, the facts in the impugned assessment year and 2009-10 are parimateria, the detailed findings given while adjudicating the appeal of assessee for assessment year 2009-10 would *mutatis mutandis* apply to the appeal in assessment year 2011-12. Consequently, appeal by the assessee is partly allowed.

9. To sum up, the appeals of the assessee are partly allowed.

Order pronounced in the open Court on Monday, the 11th day of January, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 11/01/2021

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