



IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.4142/Mum./2019
(Assessment Year : 2010-11)

ITA no.4143/Mum./2019
(Assessment Year : 2011-12)

Bright Steel Centre
72, C.P. Tank Road
1st Floor, Charni Road
Mumbai 400 004
PAN – AADFB9916F

..... Appellant

v/s

Income Tax Officer
Ward-19(1)(2), Mumbai

..... Respondent

Assessee by : Shri Vimal Punamiya
Revenue by : Shri Sanjay J. Sethi

Date of Hearing – 08.12.2020

Date of Order – 28/01/2021

ORDER

Captioned appeals have been filed by the assessee challenging two separate orders, both dated 26th March 2019, passed by the learned Commissioner of Income Tax (Appeals)-5, Mumbai, pertaining to the assessment years 2010-11 and 2011-12.

2. The common dispute in the present appeals is with regard to disallowance made on account of non-genuine purchases.

3. Brief facts, which are common in both the appeals are, the assessee is a partnership firm trading in ferrous and non-ferrous metals. For the assessment years under dispute, the assessee had filed its returns of income in the regular course. The returns of income filed by the assessee were initially processed under section 143(1) of the Act. Subsequently, on the basis of information received from the Sales Tax Department and DGIT (Inv.), Mumbai, that purchases worth ` 84,37,391, in assessment year 2010-11 and ` 1,31,14,695, in assessment year 2011-12 are non-genuine, the Assessing Officer re-opened the assessment under section 147 of the Act. In the course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of the aforesaid purchases, as, the concerned selling dealers have been identified by the Sales Tax Department as hawala operators providing accommodation bills. Though, the assessee furnished some documentary evidences to prove the genuineness of purchases, however, the Assessing Officer was not convinced with them. Thus, ultimately, he held the purchases as non-genuine. However, instead of disallowing the entire purchases, he restricted the disallowance to 12.5% of the alleged non-genuine purchases in both the assessment years relying upon the decision of the Hon'ble Gujarat High Court in CIT v/s Simit P. Sheth, [2013] 356 ITR 451 (Guj.). Accordingly, he made disallowance of ` 10,54,674, in

assessment year 2010–11 and ` 16,39,337, in assessment year 2011–12.

4. Though, the assessee contested the aforesaid additions before learned Commissioner (Appeals), however, the additions were sustained.

5. The learned Authorised Representative submitted, the assessee has shown gross profit rate of 6.79% in assessment year 2010–11 and 9.68% in assessment year 2011–12. He submitted, the VAT rate on the goods purchased by the assessee is 4%. Therefore, in worst case, disallowance, if any, can be made @ 2% of the alleged non-genuine purchases. In support of such submission, he relied upon a number of decisions as furnished in the legal paper book.

6. The learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

7. I have carefully considered the rival submissions in the light of the decisions relied upon and perused the material on record. The facts on record reveal that the assessee was unable to conclusively prove that the purchases were made from the declared source. However, it is equally true that the goods have been purchased by the

assessee from some unverified sources. Therefore, the Assessing Officer instead of disallowing the entire purchases has restricted the disallowance to the profit element embedded therein by estimating it @ 12.5%. Before me, the learned Counsel for the assessee has submitted that the assessee has declared gross profit rate of 6.79% in assessment year 2010-11 and 9.68% in assessment year 2011-12. It is also a fact that as per industry norms the profit rate on the goods traded is normally between 2% to 4%. Considering the fact that the assessee was not able to prove the source of purchase and also keeping in view the gross profit declared by the assessee, I am of the considered opinion that disallowance @ 4% of the non-genuine purchases would be fair and reasonable. Accordingly, I direct the Assessing Officer to restrict the disallowance to 4% of the non-genuine purchases in both the assessment years under dispute.

8. The ground raised by the assessee challenging the re-opening of assessment having not been pressed at the time of hearing is dismissed.

9. Ground no.4, challenging levy of interest being consequential is also dismissed.

10. In the result, appeals are partly allowed.

Order pronounced on 28/01/2021

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 28/01/2021

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

By Order

Assistant Registrar
ITAT, Mumbai