

आयकर अपीलिय 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. 4070 /मुं/2019 (नि.व.2009-10)
ITA NO. 4070/MUM/2019 (A.Y.2009-10)

M/s. Rishabh Steel Centre,
99, 2nd Pathan Street,
5th Kumbharwada,
Mumbai 400 004
PAN: AADPJ7654R

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

ITO- 19(3)(1),
Matru Mandir Tardeo Road,
Mumbai 400 007

: प्रत्यर्थी/ Respondent

Assessee by : None
Revenue by : Shri Sanjay J Sethi
सुनवाई की तारीख/
Date of Hearing : 03/12/2020
घोषणा की तारीख /
Date of Pronouncement : 22/02/2021

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-5, Mumbai (in short 'the CIT(A)') dated 07/05/2019 for the assessment year 2009-10.

2. The brief facts of the case as emanating from records are: The assessee is engaged in trading of ferrous and non-ferrous metals. Information was received by DIGT(Invn), Mumbai from Sales Tax Department, Government of Maharashtra that the assessee has indulged in obtaining accommodation entries to the tune of

Rs.71,87,246/- from various (14) hawala dealers. The assessment in the case of assessee for assessment year 2009-10 was reopened on the basis of aforesaid information. In reopened assessment proceedings, the Assessing Officer asked the assessee to furnish documents to prove genuineness of the purchases and also produce the suppliers. The notices were issued to the suppliers under section 133(6) of the Income Tax Act, 1961 (in short 'the Act'), on the addresses provided by the assessee. However, the notices were received back unserved by the postal authorities with remark 'Not known' or 'left'. To prove genuineness of the purchases assessee produced bills issued by hawala dealers, bank statements, copy of Sales Tax –VAT challans and ledger accounts of suppliers. However, the assessee failed to produce necessary documents to prove trail of goods viz. octroi receipt, inward register, stock register, etc. No confirmations from the hawala dealers were filed either. The Assessing Officer relying on the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth, 356 ITR 451 disallowed non-genuine purchases by estimating profit @ 12.5% on total such purchases and made addition of Rs.8,98,406/-.

3. Aggrieved by the assessment order dated 02/03/2015 passed under section 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A) assailing the addition. The CIT(A) rejected the contentions of assessee and followed the order of his predecessor in assessee's own case for assessment year 2011-12 and confirmed the assessment order. Hence, the present appeal by the assessee before the Tribunal.

4. Shri Sanjay J Sethi, representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id.Departmental Representative submitted that assessee has neither filed confirmation from the suppliers of goods nor has furnished documents to support trail of goods. Even the notices sent to the suppliers under section 133(6) of the Act

were received back unserved. Thus, the assessee has failed to prove the genuineness of the purchases from suspicious dealers.

5. The submissions made by Id.Departmental Representative heard and orders of authorities below examined. The assessee has indulged in obtaining bogus purchase bills from dealers declared as hawala operators by the Sales Tax Department, Government of Maharashtra. In the proceedings before the Assessing Officer, the assessee failed to amplify genuineness of the purchases. No documents to prove trail of goods were furnished by the assessee nor confirmations from dealers from whom alleged bogus purchase bills were obtained were filed by the assessee. In short, the assessee failed to prove genuineness of the purchases.

6. I find that in identical set of facts in assessee's own case in ITA No.6409 & 6410/Mum/2018 for assessment year 2011-12 and 2010-11, respectively decided on 29/01/2020 addition on account of bogus purchases were confirmed by the Tribunal. However, the Tribunal restricted the addition on account of bogus purchases by adopting G.P rate of 5%. Following the order of Tribunal in assessee's own case for assessment year 2010-11 and 2011-12, the addition on account of bogus purchases in the impugned assessment year is restricted to 5%. Consequently, the appeal of the assessee is partly allowed in the aforesaid terms.

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

Order pronounced in the open Court on Monday, the 22nd day of February, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 22/02/2021
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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai