

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. 4071 /मुं/2019 (नि.व.2011-12)
ITA NO. 4071/MUM/2019 (A.Y.2011-12)
आअसं. 4072 /मुं/2019 (नि.व.2010-11)
ITA NO. 4072/MUM/2019 (A.Y.2010-11)
आअसं. 4073 /मुं/2019 (नि.व.2009-10)
ITA NO. 4073/MUM/2019 (A.Y.2009-10)

M/s.Keshav Steel India,
Prop.Kishanlal M. Jayalwal,
115/117, Dr.M.G.Mahimtura Marg,
3rd Kumbharwada Lane,
Mumbai 400 004
PAN: AAEPJ 9769R

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

ITO- 19(2))(2),
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

These three appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-5, Mumbai (in short 'the CIT(A)') for assessment years 2009-10 and 2010-11, both orders dated 26/04/2019, and order of CIT(A) for assessment year 2011-12 dated 30/04/2019.

2. Since, grounds raised in all these three appeals and facts germane to the addition are identical, these appeals are taken up together for adjudication and are decided by this common order. However, for the sake of convenience facts are narrated from the appeal of assessee for assessment year 2009-10.

ITA No. 4073/Mum/2019 A.Y.2009-10.

3. 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.78,39,811/- from various (13) hawala dealers. On the basis of said information, The assessment in the case of assessee for assessment year 2009-10 was reopened. 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 from postal authorities with remarks 'not found'. To prove genuineness of the purchases assessee produced purchase invoices issued by hawala dealers, bank statements evidencing payments, etc. 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.9,79,976/-.

4. Aggrieved by the assessment order dated 21/01/2016 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 the assessee and applied the ratio of CIT vs. Simit P. Sheth(supra) on the facts of the assessee's case to uphold the addition made by Assessing Officer. Hence, the present appeal by the assessee before the Tribunal.

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

6. 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. Payments made through banking channel

is not conclusive proof of genuineness of the transaction. In short, the assessee failed to prove the genuineness of the purchases.

7. Taking into consideration entirety of facts, I find that estimation of G.P on bogus purchases at 12.5% is on higher side. In trading of ferrous and non-ferrous metals the G.P is generally between 5% to 8%. The assessee has suo-motu declared G.P of 5.57% in the impugned assessment year. The ends of justice would meet if the addition is restricted to 5.5% over and above the G.P declared by the assessee on bogus purchases.

8. In the result, appeal by the assessee is partly allowed, in the terms aforesaid.

ITA No.4072 & 4071/Mum/2019 , A.Y 2010-11 & 2011-12:

9. The facts in these two assessment years are identical to the facts in assessment year 2009-10, except for the quantum of bogus purchases. Even some of the names of accommodation entry providers in these assessment years are common. The nature of transactions carried out and the evidences provided by the assessee in these assessment years is identical to the one as in assessment year 2009-10. In other words, the modus operandi of transactions and evidence brought by the assessee to support its claim in all the three impugned assessment years is same. The assessee has declared G.P @ 10.01% and 5.69% in assessment years 2010-11 and 2011-12, respectively. The findings given for restricting the addition to 5.5% in assessment year 2009-10 would be *mutatis mutandis* apply to the impugned assessment years

as well. In the result, both these appeals by assessee are partly allowed for parity of reasons.

10. To sum up, all the appeals by assessee are 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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai