

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नबीन कुमार प्रधान, लेखा सदस्य के समक्ष
BEFORE VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI N.K.PRADHAN, ACCOUNTANT MEMBER

आअसं. 5406/मुं/2019 (नि.व. 2011-12)
ITA NO.5406/MUM/2019(A.Y.2011-12)

Shri Rajendra Narsinghmal Sanghvi HUF,
Room No.5, 144/46, Purshottam Mullji Bldg.,
Dr.M.G.Mahimtura Marg,
Mumbai 400 004.

PAN: AAJHR9849D

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer -19(3)91),
Matru Mandir, Nana Chowk,
Mumbai 400 007

..... प्रतिवादी/Respondent

Assessee by : None
Revenue by : Ms. Smita Verma

सुनवाई की तिथि/ Date of hearing : 11/03/2021
घोषणा की तिथि/ Date of pronouncement : 16/03/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-7, Mumbai (in short 'the CIT(A)') dated 13/06/2019 for the assessment year 2011-12.

2. The brief facts of the case as emanating from the records are: The assessee is engaged in trading of ferrous and non-ferrous metals. On the basis of information received by DGIT(Inv), Mumbai from Sales Tax Department, Government of Maharashtra, assessment in the case of assessee for assessment year 2009-10 was

reopened. As per the information received the assessee had obtained accommodation entries to the tune of Rs.77,42,185/- from various (four) dealers declared as hawala operators by the Sales Tax Department. During the assessment proceedings the assessee failed to substantiate genuineness of purchases made from suspicious dealers. The Assessing Officer considering the facts and the contentions of the assessee estimated G.P @ 12.5% on bogus purchases and made addition of Rs.6,97,773/-. Aggrieved by the assessment order dated 10/11/2016, the assessee filed appeal before the CIT(A) assailing reopening of assessment as well as addition on merits. The CIT(A) upheld the findings of Assessing Officer and dismissed the appeal of assessee.

3. Ms. Smita Verma representing the Department vehemently supporting the impugned order submitted that the assessee has failed to discharge his onus in proving genuineness of purchases and the suppliers. No documents were furnished by the assessee to prove trail of goods. No confirmations were filed by the assessee from the suppliers, even the notices issued to the suppliers by the Assessing Officer under section 133(6) of the Income Tax Act, 1961 (in short 'the Act' on the addresses provided by the assessee were returned back unserved with postal remarks 'not known'. The Id.Departmental Representative contended that the Assessing Officer and the CIT(A) have made reasonable estimation of G.P at 12.5% following the order of Hon'ble Gujarat High Court in the case of Simit P. Sheth, 356 ITR 451.

4. We have heard the submissions made by Id.Departmental Representative and have examined the orders of authorities below. Undisputedly, the assessee has failed to prove authenticity of the transactions with declared hawala operators. No documents were furnished by the assessee to substantiate that the goods were in fact delivered to the assessee or delivered at the address on the instructions of the assessee. No confirmations were either filed by the assessee from suspicious dealers. In such bogus transactions where the sales are not disputed, it is the profit

element embedded in the purchase transaction that has to be brought to tax. The Assessing Officer and CIT(A) has determined the G.P @ 12.5% of the bogus purchases. The estimation of G.P by lower authorities is on higher side. In the trade of ferrous and non-ferrous metals the G.P generally varies between 5 to 8%. In the impugned assessment year the assessee has declared G.P of 6.11%. Taking into consideration entirety of facts we hold that the ends of justice would be met if the G.P is restricted to 6.5% on bogus purchases. The impugned order is modified accordingly. The ground No.1 of the appeal is partly allowed in the terms aforesaid.

5. In ground No. 2 to 4 of the appeal, the assessee has assailed reopening of assessment. We have examined the findings of first appellate authority on this issue. We find no reason to interfere with the well reasoned findings of the First Appellate Authority. The ground No.2 to 4 of the appeal are dismissed.

6. In ground No.5 of the appeal, the assessee has challenged charging 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, hence, this ground is dismissed.

7. The ground No.6 of the appeal is general in nature and hence, require no adjudication.

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

Order pronounced in the open court on Tuesday, the 16th day of March, 2021.

Sd/-

(N.K.PRADHAN)

लेखा सदस्य /ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 16/03/2021

Vm, Sr. PS (O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषित Copy 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.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai