

आयकर अपीलीय अधिकरण
मुंबई पीठ "एसएमसी", मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 2949/मुं/2019 (नि.व. 2009-10)
ITA NO.2949/MUM/2019 (A.Y.2009-10)

Rameshkumar Tagrajji Jain
96/100, Maruti Mandir Marg
5th Kumbharwada Lane
Mumbai 400 004
PAN: AAGPJ9261Q

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer,
Ward -19(3)(1),
Mumbai 400 020.

..... प्रतिवादी/Respondent

Assessee by : Shri Prakash Shah
Revenue by : Shri Sushil Kumar Mishra

सुनवाई की तिथि/ Date of hearing : 30/12/2020
घोषणा की तिथि/ Date of pronouncement : 25/03/2021

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 27/09/2018 for the assessment year 2009-10.

2. This appeal is time barred by 119 days. The assessee has filed an affidavit giving reasons for delay in filing of the appeal. After examining the contents of affidavit, I am

satisfied that the delay in filing of appeal is not wilful or deliberate, but has resulted for the *bona fide* reasons cited in affidavit. The Hon'ble Supreme Court of India in the case of Ram Nath Sahu Ors. vs. Goberdhan Sao & Ors. reported as 2002(3) SCC 195 has held that acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bonafide can be imputed to the defaulting party. Thus, in the light of facts and the law laid down by Hon'ble Apex Court delay of 119 days in filing of the appeal is condoned and the appeal is admitted for disposal on merits.

3. Shri Prakash Shah appearing on behalf of the assessee submitted that the assessee is engaged in trading of ferrous and non-ferrous metals. The assessment in the case of assessee for assessment year 2009-10 was reopened on the basis of information received by the DGIT (Inv.) Mumbai from the Sales Tax Department, Government of Maharashtra. As per the information received, the assessee had obtained bogus purchase bills to the tune of Rs.84,23,315/- from various (seventeen) hawala dealers. In order to prove genuineness of purchases during assessment proceedings, the assessee furnished copies of bills, quantitative details of the stock and sales, bank statements evidencing payments made to the dealers ledger of alleged hawala dealers, etc. The Assessing Officer after examining evidences furnished by the assessee made addition on account of bogus purchases by estimating GP at 12.5% of the alleged hawala purchases.

Aggrieved by said addition, the assessee filed appeal before the CIT(A) against the Assessment Order dated 18/3/2015 passed under section 143(3) r.w.s. 147 of the Income Tax Act,1961 (in short 'the Act'). The CIT(A) without appreciating facts of the case and documents on record confirmed the addition made by the Assessing Officer. The Id. Authorised Representative submitted that the CIT(A) has failed to consider GP of 2.93% declared by the assessee. Estimation of GP by the Assessing Officer and the CIT(A) is very much on the higher side.

4. Per contra, Shri Sushil Kumar Mishra, representing the Department vehemently defended the impugned order and prayed for dismissing appeal by the assessee. The Id. Departmental Representative submitted that the assessee failed to discharge his own in proving genuineness of purchases and the dealers. The Assessing officer after considering the facts of case and the judgement of Hon'ble Gujarat High Court in the case of CIT vs. Simit P Sheth 356 ITR 451 restricted the addition to 12.5%. The estimation of GP by the Assessing officer and the CIT(A) at 12.5% is fair and reasonable.

5. Both sides heard, orders of authorities below examined. The assessee is a trader in ferrous and non-ferrous metals. Undisputedly, the assessee has failed to substantiate genuineness of the purchases, as well as the dealers. At the same time turnover declared by assessee has been accepted by the Assessing Officer. Where the sales have been accepted, it is the profit element embedded in bogus purchases that has to be taxed. I am of considered view, that estimation of GP at 12.5% by the Assessing Officer and the CIT(A) is on higher side. Generally, the GP in trading of ferrous and non-ferrous metals range between 5% to 8%. The assessee has declared GP of 2.93%. Taking into consideration entire facts of the case, addition on account of bogus purchases is restricted to 6.5% of such purchase. The impugned order is modified and the appeal of assessee is partly allowed.

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

Order pronounced in the open court on Thursday the 25th day of March, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated 25/03/2021
Vm, Sr. PS (O/S)

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.

//True Copy//

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai