

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA Nos.3516, 3517 & 3518/M/2018
Assessment Years: 2009-10, 2010-11 & 2011-12**

M/s. Mili Steels Pvt. Ltd., D-48, Sarvodaya Nagar, Mumbai – 400 004 PAN: AAACM5722A	Vs.	CIT 16(2), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Snehal Shah, A.R.
Revenue by : Shri Bharat Andhale, D.R.

Date of Hearing : 11.01.2021
Date of Pronouncement : 06.04.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals have been preferred by the assessee against the orders even dated 20.02.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2009-10, 2010-11 & 2011-12.

2. The issues involved in all the appeals are common and relate to the same assessee and therefore these appeals are being disposed of together for the sake of brevity and convenience.

3. First we are taking up ITA No.3516/M/2018 A.Y. 2009-10.

The grounds taken by the assessee are reproduced as under:

“1. The appellant strongly objects to the notice issued u/s 148 of the Income-tax Act, 1961 dated 13/03/2015 as the same is dependent on several factors like satisfaction note, approval sought, evidence relied upon by the learned Assessing

Officer before recording the reasons that prompted reopening of the assessment and ultimately based merely on assumptions without any corroborative evidence to support the same.

2. The learned CIT(A) grossly erred in disallowing 12.5% of the alleged purchases which is arbitrary and has no basis, even when the evidences and the records submitted by the Appellant as well as the corresponding sales to the alleged purchases were not disputed and were duly accepted by both the Assessing Officer and the learned CIT(A).

3. The learned Assessing Officer has erred in disallowing the depreciation claimed Rs. 1,16,100/- on machinery purchased from M/s Accure Impex Pvt Ltd without appreciating the facts of the case in the right perspective.”

4. The ground No.1 is not pressed at the time of hearing and therefore the same is dismissed as not pressed.

5. The issue raised in ground No.2 is against the order of Ld. CIT(A) confirming the bogus purchase at 12.5% by upholding the order of AO. The assessee has challenged by way of ground no. 3 the confirmation of AO's order on the issue of disallowance of depreciation of Rs. 1,16,100/- claimed on the purchase of plant & machinery.

6. The facts in brief are that the assessee filed the return of income on 30.09.2009 declaring an income of Rs.96,35,010/-. The assessment was completed on 30.12.2011 determining the total income at Rs.97,34,510/-. Subsequently, the case of the assessee was reopened under section 148 and notice issued on 13.03.2015 which was duly served upon the assessee. The AO during the course of assessment proceedings observed that assessee has made following bogus purchases.

S.N.	Name of the party	Basic purchase amount	VAT	Amount of purchase	PAN
1	Arihant Enterprise	7500	300	7,800	AAEHP2489Q
2	Accure Impex Pvt. Ltd.	1548000	193500	17,41,500	AAGCA4611C
	Total	15,55,500	1,93,800	17,49,300	

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7. The assessee filed necessary evidences of purchases from Arihant Enterprise and also Accure Impex Pvt. Ltd. before the AO submitting bills, vouchers, payments etc. along with names and addresses of the suppliers. The AO simply gave an observation that assessee has failed to produce the parties for cross verification and even the parties did not exist at those addresses and no changed addresses were furnished by the assessee. Finally, the AO made addition @ 12.5% of bogus purchases of Rs.7,500/- the amount of purchase from Arihant Enterprise thereby making an addition of Rs.938/- as unexplained expenditure. Similarly, the AO doubted the purchases made from Accure Impex Pvt. Ltd. to the tune of Rs.15,48,000/- + VAT Rs.1,93,500/-. The said purchases were made on capital account and capitalized under the head Plant & Machinery. The assessee claimed the set off of VAT of Rs.1,93,500/- against the VAT liability. The AO doubted the said purchases also despite assessee having filed all the necessary evidences before the AO and rejected the claim of the assessee of depreciation on the sad plant & machinery which was stated to be made from the bogus suppliers thereby disallowing Rs.1,16,100/- by framing assessment under section 143(3) read with section 147 of the Act dated 19.02.2016.

8. In the appellate proceedings, the Ld. CIT(A) affirmed the order of AO by observing that these purchases are made from the bogus suppliers as per the list of Sales Tax Department, Government of Maharashtra and thus confirmed the additions made by the AO.

9. We have heard the rival submissions of both the parties and perused the material on record. We find from the evidences filed before us that initially the VAT credit was denied to the assessee, however, later on the appellate authority has allowed the VAT paid by the assessee and also the penalty imposed thereon was deleted. We observe that assessee filed all the evidences before the authorities below and both the authorities have failed to carry out any further verification. We note that even the information obtained by the assessee from the Sales Tax Department through RTI clearly states that the Sales Tax is not having necessary records to prove that the suppliers of the assessee were bogus hawala dealers. Finally, we would like to mention that assessee has declared a net income of Rs.96,35,010/- in the return filed on 30.09.2009. considering this income level, how can an assessee who has income of this much amount will make bogus purchase of Rs.7,500/- from Arihant Enterprises which was claimed in the profit & loss account and Rs.15,48,000/- from Accure Impex Pvt. Ltd. which was for purchase of plant & machinery and claimed depreciation only to the tune of Rs.1,16,100/-. Under these circumstances, we are not in a position to sustain the order of Ld. CIT(A) whereby the order of AO has been upheld. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to delete the disallowances. Accordingly ground no. 2 and 3 are allowed.

10. Appeal of the assessee is partly allowed.

ITA No.3617 & 3518/M/2018 A.Y. 2010-11 & 2011-12

11. The issues involved in both the appeals are identical to the one as decided by us above in ITA No.3616/M/2018 for A.Y. 2009-10. Therefore, our finding in ITA No.3616/M/2018 for A.Y. 2009-10 will, mutatis mutandis, apply to these appeals as well. Accordingly the appeals of the assessee are partly allowed.

12. In the result, all the appeals of the assessee are partly allowed.

Order pronounced in the open court on 06.04.2021.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 06.04.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.