

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी" , मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 3836/मुं/2019 (नि.व.2010-11)
ITA NO.3836/MUM/2019 (A.Y.2010-11)
आअसं. 3837/मुं/2019 (नि.व.2011-12)
ITA NO.3837/MUM/2019 (A.Y.2011-12)

M/s Virat Pipes & Tubes
59th Nanubhai Desai Road,
Khetwadi Main Road,
Mumbai-400004.

PAN: **AAEFV8845L**

..... अपीलार्थी / Appellant

बनाम Vs.

ITO -19(3)(5)
Matru Mandir, Tardeo Road,
Mumbai-400007

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/ Respondent by : Ms. Smita Verma

सुनवाई की तिथि/ Date of hearing : 04/05/2021

घोषणा की तिथि/ Date of pronouncement : 07/06/2021

आदेश / ORDER

PER VIKAS AWASTHY, J.M:

These two appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-6, Mumbai [hereinafter referred to as 'the CIT(A)']. In ITA No. 3836/Mum/2019, the assessee has assailed the order

of CIT(A) for AY 2010-11 and in ITA No. 3837/Mum/2019, the assessee has impugned the order of CIT(A) for AY 2011-12. Both the impugned orders are of even date i.e. 01.04.2019. Since, the facts and the grounds raised in both the appeals are identical, these appeals are taken up together for adjudication and are decided by this common order.

2. For the sake of convenience, facts are extracted from the appeal of assessee in ITA No. 3836/Mum/2019 for AY 2010-11. The assessee is a trader in ferrous and non-ferrous metals. On the basis of information received from the Sales Tax Department, Government of Maharashtra, assessment in the case of assessee for AY 2010-11 was re-opened. During re-assessment proceedings, the AO observed that the assessee had obtained bogus purchase bills aggregating to Rs. 1,10,69,366/- from various (nine) dealers, declared as hawala operators. The AO issued notices under section 133(6) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] to the dealers from whom the assessee had obtained bogus purchase bills. The notices were received back unserved from postal authorities with remarks "not known" or "no such addresses" or "left". No documents viz. transport receipt, inward register, stock register, etc. were produced by the assessee to conclusively prove trail of goods. The AO made addition of Rs. 13,83,671/- by estimating Gross Profit (GP) @ 12.5% on non-genuine purchases. Against the assessment order dated 17.02.2016 passed under section 143(3) read with section 147 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of assessee and confirmed the addition. Hence, the present appeal by the assessee.

3. Ms. Smita Verma representing the Department strongly defended the impugned order and prayed for dismissing the appeal of assessee. The Id. DR submitted that the assessee could neither produce dealers from whom purchases were made nor any confirmations were filed by the assessee from the dealers. No document was produced by the assessee to show that the goods were indeed received by the assessee. The AO and the CIT(A) in fair and reasonable manner has estimated Gross Profit (GP) on bogus purchase at 12.5%.

4. Submissions made by Id. DR heard, orders of authorities below examined. The assessee is a trader in ferrous and non-ferrous metals. Undisputedly, the assessee has failed to discharge its onus in proving genuineness of the alleged bogus purchases and the dealers. At the same time, the AO has accepted the sales turnover declared by the assessee. In such circumstances, it is only the profit element embedded in bogus transactions that has to be brought to tax. Generally in trading of ferrous and non-ferrous metals, the GP ranges between 5% to 8%. The assessee has declared GP of 7.55% in AY 2010-11. The estimation of GP on bogus purchase at 12.5% is on higher side. To meet the ends of justice, the impugned order is modified and the GP on bogus purchases is restricted to 7.5% over and above the GP declared by the assessee.

5. The appeal by assessee is partly allowed, in the terms aforesaid.

आअसं. 3836/मुं/2019 (नि.व.2010-11)
 ITA NO.3836/MUM/2019 (A.Y.2010-11)
 आअसं. 3837/मुं/2019 (नि.व.2011-12)
 ITA NO.3837/MUM/2019 (A.Y.2011-12)

ITA No. 3837/Mum/2019 for AY 2011-12

6. The facts in both the appeals are identical except for the amount of bogus purchases, therefore, the findings given in appeal of assessee in ITA No.3836/Mum/2019 for AY 2010-11 would mutates mutandis apply to the present appeal. Accordingly, the appeal of assessee is partly allowed for parity of reasons.

7. To sum up, both the appeals by assessee are partly allowed.

Order pronounced in the open court on **Monday**, the **07th** day of June, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 07/06/2021

SK, PS

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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai