

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी" , मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 5987/मुं/2019 (नि.व 2010-11)
ITA NO.5987/MUM/2019(A.Y 2010-11)
आअसं. 5988/मुं/2019 (नि.व 2011-12)
ITA NO.5988/MUM/2019(A.Y 2011-12)

M/s. Nilesh Metal Company,
(Rajkumar Doongarmallji Chandak)
42/46 Office No.13, Guru Rajendra House,
5th Kumbharwada, 2nd Pathan Street,
Mumbai 400 004

PAN: AAIPC-2403-R

..... अपीलार्थी /Appellant

बनाम Vs.

ITO-19(3)(1),
2nd Floor, Matru Mandir,
Tardeo Road,
Mumbai 400 007

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Shri Sanjay J. Sethi

सुनवाई की तिथि/ Date of hearing : 22/06/2021

घोषणा की तिथि/ Date of pronouncement : 26/07/2021

आदेश/ ORDER

These two appeals by the assessee are directed against the order Commissioner of Income Tax(Appeals)-29, Mumbai [in short 'the CIT(A)'] for the assessment years 2010-11 and 2011-12, respectively. Both the impugned orders are of even dated i.e. 23/02/2017. Since, the facts germane to the issue raised in both appeals are identical(except for the amounts involved), these

appeals were taken up for hearing together and are decided by this common order.

2. The brief facts of the case as emanating from records are: The assessee is engaged in trading of ferrous and non-ferrous metals. The assessment for assessment year 2010-11 and 2011-12 were reopened on the basis of information received from DGIT(Inv), Mumbai regarding assessee's involvement in obtaining bogus purchase bills from dealers declared as hawala operators by the Sales Tax Department, Government of Maharashtra. In assessment year 2010-11 the assessee obtained bogus purchase bills aggregating to Rs.1,72,12,521/- from ten such suspicious dealers (in assessment year 2011-12 the assessee obtained bogus purchase bills aggregating to Rs.1,79,39,898/- from hawala operators). During assessment proceedings the Assessing Officer issued notice under section 133(6) of Income Tax Act,1961 (in short 'the Act') to the aforesaid dealers on the addresses furnished by the assessee. However, the notices were returned back unserved by the postal authorities with the remarks 'not known or no such address or left'. The assessee could neither produce suspicious dealers nor any confirmation from the said dealers. Further, no documentary evidence was furnished by the assessee in the form of delivery challans, transport receipts, octroi receipts, goods inwards register, stock register, etc. to prove trail of goods. In the absence of any cogent evidence to substantiate genuineness of suspicious dealers and purchases made from them, the Assessing Officer disallowed 12.5% of bogus purchases and made addition of Rs.21,51,565/-. For similar reasons the addition of Rs.22,42,487/- was made by the Assessing Officer in assessment year 2011-12. Thereafter, the assessee filed appeals before the CIT(A) for respective assessment years. The CIT(A) upheld the

findings of Assessing Officer to the extent assessee's involvement in obtaining bogus purchase bills from hawala operators. However, the CIT(A) granted part relief to the assessee by reducing G.P already declared by the assessee from G.P estimated by the Assessing Officer i.e. 12.5% minus G.P already declared by the assessee on unproved purchases. Still aggrieved, the assessee is in appeal for both the impugned assessment years.

3. Shri Sanjay J. Sethi representing the Department vehemently supported the findings of CIT(A). The Id.Departmental Representative submitted that the assessee has failed to discharge his onus in proving genuineness of the dealers and purchases made from them. The CIT(A) has been very considerate in allowing the benefit of G.P already declared on unproved purchases. The Id.Departmental Representative prayed for upholding the impugned orders and dismissing appeals by the assessee.

4. The submissions made by Id.Departmental Representative heard, orders of authorities below examined. Undisputedly, the assessee failed to discharge his onus in proving authenticity of the dealers and the purchases made from them in both the impugned assessment years. The Assessing Officer estimated suppressed margin on unproved purchases at 12.5%. Generally, in the trade of ferrous and non-ferrous metals G.P ranges between 5% to 8%. Therefore, estimation of G.P on unproved purchases by the Assessing Officer is on higher side. In First Appellate proceedings, the CIT(A) has granted relief by reducing the G.P already declared by the assessee on unproved purchases from estimated addition of 12.5%. Taking into consideration entirety of facts I am of the considered view that ends of justice would be met if G.P on unproved purchases is restricted to 6%. The ground No.1 of both the appeal is thus, partly allowed.

5. In ground No.2 of appeal, the assessee has assailed initiation of penalty proceedings under section 271(1)(c) of the Act. Challenge to penalty proceedings at this stage is premature. Thus, ground No.2 raised in both the appeals is dismissed as premature.

6. In the result, appeal by the assessee for assessment year 2011-11 and 2011-12 are partly allowed.

Order pronounced in the open Court on Monday, the 26th day of July, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 26 /07/2021
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.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai