

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ ITA No. 2005/Mum/2020

(निर्धारण वर्ष / Assessment Year 2010-11)

Shri Omprakash Hukmaram Vishnoi R.No. 29, 4 th Floor, 47/51, Kika Street, Gulalwadi, Mumbai-400 004	Vs.	The Income Tax Officer, Ward 19(2)(4), Matru Mandir, Tardeo, Mumbai-400 007
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AEFPV5930D		

अपीलार्थी की ओर से / Appellant by	:	Shri Bharat Kumar, AR
प्रत्यर्थी की ओर से / Respondent by	:	Smt. Smita Verma, DR

सुनवाई की तारीख / Date of hearing:	30.09.2021
घोषणा की तारीख / Date of pronouncement :	30.09.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /
PER MAHAVIR SINGH, VP:

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-54, Mumbai [in short CIT(A)], in appeal No. CIT(A)-30/IT-933/ ITO 19(2)(4) 2016-17 vide dated 14.06.2019. The Assessment was framed by the Income Tax Officer, Ward-19(2)(4), Mumbai (in short ITO/ AO) for the A.Y. 2010-11 vide order dated 21.01.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. At the outset, it is noticed that this appeal is delayed by 479 days. The date of receipt of order of CIT(A) was 20.06.2019 and the appeal was filed in Tribunal on 14.12.2020. The details given by assessee reads as under:-



Date of order received by Assessee	26.06.2019
Date of appeal filed before your honour	14.12.2020
Delay in filing appeal (including period of lock down)	479 Days
Period of Limitation extended by decision of Hon'ble Supreme Court	With effect from 15.03.2020 to 14.03.2021
Delay covered by decision of Hon'ble Supreme Court decision	15.03.2020 to 14.12.2020 i.e. 274 Days
Delay which is not covered by Hon'ble Supreme court decision i.e. due to reason beyond control of Assessee	205 Days (479 Days minus 274 Days)

3. The learned Counsel for the assessee filed copy of Supreme Court order in Suo Motu Writ Petition (Civil) No. 3 of 2020 dated 08.03.2021 and pleaded that the delay be condoned for the reason that the assessee after handing over the papers to his erstwhile consultants went to his native place. The assessee was of the bonafide belief that the erstwhile consultant would file the appeal and he came in the month of February, 2020 for the hearing of the appeal for the AY 2011-12, wherein similar issues were pending but the assessee found that his erstwhile consultant has not file the appeal for Assessment Year 2010-11 and then he started to consult some other consultant who could file the appeal for the Assessment Year 2010-11 i.e. year under consideration. But before he could finalize new tax consultant, Govt. of India impose lockdown due to Covid-19 and therefore, there was a total 479 days delay.

4. When these facts were confronted to the learned Sr. Dr. Smt. Smita Verma, she could not controvert the above facts.

5. In view of the above given facts, I condoned the delay and admit the appeal.



6. The only issue in this appeal of assessee is as regards to the order of CIT(A) by estimation of profit rate at 12.5% as against 100% addition made by Assessing Officer. For this, assessee has raised the following ground No.1:-

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming addition of ₹14,79,640/- on account of alleged bogus purchases i.e. 12.50 minus existing GP.”

7. I have heard the rival contentions and gone through the facts and circumstances of the case. I noted that the assessee's appeal for Assessment Year 2011-12 in ITA No.7135/Mum/2019 was pronounced on 18.02.2020, wherein the assessee's GP was estimated at 2% by observing as under:-

“4. In the appellate proceedings, Ld. CIT(A) partly allowed the appeal of the assessee by directing the AO to apply a rate which is calculated by reducing the GP declared by the assessee during the year from 12.5% applied by the AO.

5. In this case, since the assessee is a petty trader dealing in ferrous and non ferrous metal items, the rate applied by the Ld. CIT(A) is excessive and unreasonable and if sustained would lead to hypothetical result. Since the GP in the ferrous and non ferrous is very low and keeping in view of the condition of assessee being a petty scrap dealer the order of Ld. CIT(A) is reversed and AO is directed to apply GP of 2%.”

8. Now, before me, the assessee vide letter dated 29.09.2021 agreed by writing as under:-



“with reference to above stated subject, we would like to submit that Assessee filed appeal before your honours and there was delay in filing appeal which was condoned by Hon’ble ITAT. Therefore, we are agreed for addition for 5% of alleged bogus purchases in peculiar facts and circumstances of the case.”

9. Since, the facts and circumstances are exactly identical from earlier years and now assessee agreed for estimation of profit rate at 5% of the alleged bogus purchases, I restrict the disallowance at 5% as against the estimation of profit by the CIT(A) at 12.5%.

10. In the result, the appeal of assessee is partly allowed as indicated above.

Order pronounced in the open court on 30.09.2021.

Sd/-
(महावीर सिंह /MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 30.09.2021

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS



आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai