

आयकर अपीलीय 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. 321/मुं/2019 (नि.व 2011-12)
ITA NO.321/MUM/2019(A.Y 2011-12)

Mr. Sanjay Devraj Dhanresha,
C/o M/s. J.K.Bhageria & Associates,
Chartered Accountants,
106, 1st Floor, Classic Heritage, Arey Road,
Near Udipi Hotel,Goregaon (E),
Mumbai 400 063
PAN: ADOPD-3923-G

..... अपीलार्थी /Appellant

बनाम Vs.

ITO-18(3)(2),
Mumbai.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Jitesh Bhageria

प्रतिवादी द्वारा/Respondent by : Shri Sanjay J. Sethi

सुनवाई की तिथि/ Date of hearing : 06/09/2021

घोषणा की तिथि/ Date of pronouncement : 01/12/2021

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals)-53, Mumbai [in short 'the CIT(A)'] dated 07/12/2018 for the Assessment Year 2011-12.

2. Shri Jitesh Bhageria appearing on behalf of the assessee submitted that the assessee is engaged in manufacturing and whole sale trading of gold jewellery. The assessment for assessment year 2011-12 in the case of assessee was reopened on

the ground that assessee has obtained accommodation entries aggregating to Rs.1,47,59,950/- from following hawala dealers during the period relevant to the assessment year under appeal:

- | | |
|----------------------------|-------------------|
| (i) Niddhish Impex P. Ltd. | : Rs. 64,57,346/- |
| (ii) Moksha Impex | : Rs. 83,02,604/- |

During assessment proceedings the assessee furnished various documents viz. copies of purchase invoice, bank statement evidencing payment by account payee cheque, copy of purchase and sales register, ledger account of parties, etc. to substantiate genuineness of purchases from the aforesaid parties. The Assessing Officer rejected the books of account and made addition of Rs.18,44,993/- by estimating G.P @12.5% on alleged bogus purchases. Aggrieved by the assessment order passed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act'), the assessee filed appeal before the CIT(A), inter-alia assailing validity of assessment in the absence of notice issued u/s.143(2) of the Act, rejection of books of account and addition on merits. The CIT(A) without appreciating the facts and documents on record dismissed the appeal of assessee in toto. Hence, the assessee is in second appeal before the Tribunal. The Id. Authorized Representative for the assessee submitted that the assessee has declared G.P @ 13.37% during the relevant period therefore, the addition made by Assessing Officer at 12.5% and sustained by CIT(A) on alleged bogus purchases is very much on the higher side. The Id. Authorized Representative for the assessee stated that although the assessee has raised ground challenging reopening of assessment however, the assessee is not pressing the legal grounds at this stage.

3. On the other hand, Shri Sanjay J. Sethi representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The Id. Departmental Representative submitted that the assessee has failed to discharge his onus in proving genuineness of the dealers and the purchases

made from them. The Assessing Officer had issued notice under section 133(6) of the Act to the parties from whom the assessee had allegedly made purchases. The said notices were returned back by the Postal Authorities with the remarks "Left". The Assessing Officer in a fair and balanced order estimated G.P on bogus transactions @ 12.5% and the same was sustained by the CIT(A). The Id.Departmental Representative prayed for upholding the impugned order.

4. Submissions made by both sides heard, orders of authorities below and relevant documents on record examined. The assessee in appeal has raised multiple grounds challenging validity of reassessment proceedings and also addition on merits. The Id. Authorized Representative of the assessee stated at Bar that at this stage he is only assailing addition on merits raised in ground No.4. The other grounds challenging reopening/validity of assessment is not pressed at this stage.

5. Undisputedly, during assessment proceedings the assessee has failed to produce the dealers stated to be hawala dealers from whom the assessee had made purchases aggregating to Rs.1,47,59,950/-. No confirmations from the said dealers were furnished either. Payments made through banking channel are not sacrosanct and does not absolve assessee to discharge its onus to prove genuineness of purchase transactions. The Assessing Officer made addition by estimating G.P on unproved purchases @ 12.5% and the same has been accepted by the CIT(A) . The assessee has suo-motu declared G.P @ 13.37%. Taking into consideration entire facts, including the nature of assessee's business and the G.P already declared, I find that estimation of G.P on unproved purchases at 12.5% is on the higher side. It is only the suppressed profit margin in unproved purchases that can be brought to tax. In my considered view restricting addition to 5% on bogus purchases would meet the ends of justice. I hold and direct accordingly. The impugned order is modified and the addition in respect of bogus purchases is restricted to 5% of bogus

transactions. The ground No.4 of the appeal is thus, partly allowed in the terms aforesaid.

5. In ground No.1 to 3 of appeal, the assessee has assailed reopening of assessment /validity of assessment under section 147 of the Act and rejection of books of account. Since, these grounds were not pressed by the Id. Authorized Representative of the assessee at this stage, the said grounds are not adjudicated and are left open.

6. The grounds No.5 & 6 are general in nature, hence, require no adjudication.

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

Order pronounced in the open Court on Wednesday the 1st day of December, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 01/12/2021

Vm, Sr. PS (O/S)

प्रतिलिपि अग्रहितCopy 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