

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

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.3580/Mum./2018
(Assessment Year : 2007-08)

Suresh Maneklal Sheth
7, Kusum Niwas, S.V. Road
Vile Parle (West), Mumbai 400 056
PAN – AJMPS0119H

..... Appellant

v/s

Income Tax Officer
Ward-25(3)(4), Mumbai

.....Respondent

Assessee by : Shri Prateek Jain
Revenue by : Shri A.K. Das

Date of Hearing – 14/11/2022

Date of Order – 21/11/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 15/03/2018, passed under section 250 of the Income Tax Act, 1961 (*'the Act'*) by the learned Commissioner of Income Tax (Appeals) – 37, Mumbai [*'learned CIT(A)'*], for the assessment year 2007-08.

2. The present appeal has been listed for hearing before us pursuant to the order dated 10/10/2022, passed by the Co-ordinate Bench of the Tribunal in Suresh Maneklal Sheth vs ITO, M.A. no. 107/Mum./2022 (in ITA no. 3580/

Mum./2018, for the assessment year 2007-08), whereby, the earlier order dated 29/11/2021, passed under section 254(1) of the Act was recalled and appeal was directed to be re-fixed for hearing.

3. In this appeal, the assessee has raised the following grounds:

"The following grounds of appeal are without prejudice to one another.

1. On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) [CITA] erred in not holding that the notice dated 19-03-2014 issued u/s 148 of the Act is beyond jurisdiction as barred by limitation as per first proviso to section 147 of the Act and is bad in law. The consequential order passed u/s 143(3) r.w.s. 147 of the Act is bad in law and illegal and hence, deserves to be quashed.

2 On the facts and circumstances of the appellant's case and in law the Ld Commissioner of Income Tax (Appeals) erred in disallowing a sum of Rs. 6,69,566/- being 12.5% of the alleged bogus purchases amounting to Rs 53,56,525/-

3. The Appellant craves to add, amend, alter, modify and or withdraw any of the above grounds of appeal on or before the date of hearing.

The appellant prays this Hon'ble Tribunal to delete the addition/disallowances made by the Ld. Assessing Officer, which is confirmed by the Ld. Commissioner of Income Tax (Appeals)."

4. Ground No. 1 raised by the assessee challenging the validity of reassessment proceedings under section 147 of the Act was stated to be not pressed at the time of the hearing. The same is reckoned as a statement made from the Bar and accordingly, the ground No. 1 raised by the assessee is dismissed as not pressed.

5. The issue arising in ground No. 2, raised in the assessee's appeal, is pertaining to disallowance on account of bogus purchases.

6. The brief facts of the case as emanating from the record are: The assessee is a proprietor of Namrata Paper Agencies and is engaged in the business of trading in paper. For the year under consideration, assessee filed its return of income on 21/04/2014, declaring total income of Rs. 6,63,520. Reassessment proceedings under section 147 of the Act were initiated in the case of the assessee based on information received from Sales Tax Department through DGIT (Investigation), Mumbai that the assessee is the beneficiary of bogus purchase bills and has obtained accommodation entries from 2 parties to the tune of Rs. 53,56,525. During the course of assessment proceedings, notice under section 133 (6) of the Act was sent to these parties, which were returned unserved with the remark 'left' by the postal authorities. The opportunity was also granted to the assessee to produce the parties and prove the genuineness of the transactions. However, the assessee submitted that the transaction is very old and is difficult to bring the party to prove the genuineness of the transaction. In the absence of any proof of the genuineness of the transaction, the Assessing Officer vide order dated 27/03/2015, passed under section 143(3) read with section 147 of the Act made the addition of the entire amount of bogus purchases of Rs. 53,56,525, to the total income of the assessee.

7. In appeal, the learned CIT(A) vide impugned order granted partial relief to the assessee and restricted the addition to 12.5% of the bogus purchases on the basis that corresponding sales made by the assessee out of the disputed purchases are not in doubt. Being aggrieved, now the assessee is in appeal before us.

8. During the hearing, the learned Authorised Representative ('learned AR') submitted that the coordinate bench of the Tribunal in the assessee's own case has restricted the addition by considering 6% of non-genuine purchases.
9. On the other hand, the learned Departmental Representative ('learned DR') vehemently relied upon the order passed by the learned CIT(A).
10. We have considered the rival submissions and perused the material available on record. We find that the coordinate bench of the Tribunal in assessee's own case in Suresh Maneklal Sheth vs ITO, in ITA No. 3581 and 3582/Mum/2018, for the assessment years 2008-09 and 2009-10, vide order dated 30/08/2019, restricted the addition in respect of non-genuine purchases to 6% under similar facts and circumstances, by observing as under:

"9. Having held so, now we propose to deal with the merits of the additions made by the Assessing Officer and partly sustained by learned Commissioner (Appeals). As could be seen from the facts on record, in course of assessment proceedings the assessee had failed to prove the genuineness of purchases from the declared source by furnishing any cogent evidence to show actual delivery of goods. Further, notices issued under section 133(6) of the Act by the Assessing Officer to verify the genuineness of purchases also returned back un-served, hence, the identity of the selling dealers could not be established. However, it is a fact on record that sales effected by the assessee have not been disputed by the Assessing Officer. That being the case, it has to be concluded that in absence of purchases, the assessee could not have effected corresponding sales. Thus, dispute remains only with regard to the source from which the assessee purchased the goods. In the aforesaid factual position, the addition of the entire purchase is not justified. Therefore, to that extent, learned Commissioner (Appeals) was correct in estimating the profit on the non-genuine purchases for the purpose of addition.

10. Now reverting back to the reasonableness of estimating profit @ 12.5%, after over all consideration of facts and material on record, the nature of business carried on by the assessee as well as the gross profit margin earned, we are of the view that estimation of profit @ 6% of the non-genuine purchases would be reasonable. Accordingly, we direct the Assessing Officer to restrict the addition in both the assessment years

under appeal to 6% of the non-genuine purchases. Grounds raised by the Revenue are dismissed and grounds raised by the assessee are partly allowed.”

11. In the present case also, corresponding sales made by the assessee out of the disputed purchases have not been doubted by the Revenue. Thus, in absence of purchases, the assessee could not have affected corresponding sales. Therefore, respectfully following the judicial precedent in the assessee's own case cited supra, we direct the Assessing Officer to restrict the addition to 6% of the bogus purchases. Accordingly, ground No. 2 raised in the assessee's appeal is partly allowed.

12. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 21/11/2022

Sd/-
S. RIFAUR RAHMAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 21/11/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai