

आयकर अपीलिय अधिकरण
मुंबई पीठ "एफ", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" BENCH
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER

आआसं. १४९५/मुंबई/२०२० (नि.व. २००९-१०)

ITA NO.1495/MUM/2020 (A.Y.2009-10)

आआसं. २०१९/मुंबई/२०२१ (नि.व. २००९-१०)

ITA NO.2019/MUM/2021 (A.Y.2009-10)

M/s. Jindutt Steel

..... अपीलार्थी/Appellant

21, 1st Floor, Manipur House, 1st Parsiwada

Lane, Behind Alankar Cinema

Mumbai-400 0054

PAN No. AAOFM3335J

बनाम Vs.

Income Tax Officer Ward-19 (2) (1)

..... प्रतिवादी/Respondent

Matru Mandir, Room No.218

Tardeo Road,

Mumbai-400 007

अपीलार्थी द्वारा / Applicant by : Shri Amrit Porwal

प्रतिवादी द्वारा / Respondent by : Ms. Vranda U Matkari Sr. AR

सुनवाई की तिथि / Date of hearing : 17/08/2022

घोषणा की तिथि / Date of pronouncement : 11/11/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the assessee emanates from similar sets of facts, therefore, these appeals are taken up together for adjudication and are decided by this common order.

**ITA No.1495/MUM/2020**

2. This appeal is against the order of the Commissioner of Income Tax (Appeals)-13, Mumbai [hereinafter referred to as "CIT(A)] dated 05/08/2019. The aforesaid appeal arises from the reassessment order dated 29/03/2016 passed u/s 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

3. The brief facts of the case as emanating from the record are:

The assessee is a partnership firm engaged in trading of ferrous and non ferrous metals. The assessee filed its return of income declaring total income of Rs.6,17,902/-. Thereafter, the assessee filed revised return of income on 17/11/2009 declaring total income of Rs.7,49,998/-. The assessment u/s 143(3) was completed on 28/12/2011 assessing total income at Rs.57,21,690/-. Thereafter, assessment for AY 2009-10 was reopened and notice u/s 148 of the Act was issued to the assessee on 17/06/2014. As per the information received from DGIT(Inv.),Mumbai, the assessee had obtained accommodation entries aggregating to Rs.3.20 crores from declared hawala operators. The Assessing Officer (AO) estimated suppressed profit on bogus purchase @ 12.5% and made addition of Rs.40,05,156/- vide order dated 29/03/2016 passed u/s 143(3) r.w.s. 147 of the Act. The assessee filed appeal before the CIT(A) against the addition made. The CIT(A) vide impugned order enhanced addition to 100% of unproved purchases. Hence, the present appeal by the assessee.

4. Shri Amrit Porwal appearing on behalf of the assessee submitted that the assessee is engaged in trading of ferrous and non ferrous metals and has declared



GP of 3.37%. The AO made addition of 12.5% of alleged bogus purchases. The assessee assailed the addition before the CIT(A). The CIT(A) vide impugned order enhanced the addition to 100%. The learned Authorised Representative (AR) submitted that it is a well settled law that in the case of bogus purchase entire sales cannot be added. It is only the profit element embedded in such sales that can be brought to tax. The learned AR submitted that in the first instance the purchases made by the assessee are not bogus as alleged by AO and upheld by the CIT(A). Assuming, without admitting that the purchases made by the assessee are bogus, entire such purchases cannot be disallowed. The learned AR submits that a reasonable estimation of profit on alleged bogus purchases can be made.

5. Per contra, Ms. Vrandra U. Matkari vehemently defended the impugned order and prayed for dismissing appeal of the assessee.

6. Both sides heard, orders of the authorities below examined. The assessee has indulged in obtaining bogus purchase bills. During reassessment proceedings, the assessee failed to discharge its onus in proving genuineness of the purchases and the dealers from whom such purchases were made. The notices issued by the AO to the suppliers u/s 133(6) of the Act were received back unserved with remarks, "not known" or "no such address" or "left" etc. Further, the assessee has failed to furnish any documentary evidence to substantiate movement of goods such as delivery challans, octroi receipts, inward registers, gate pass etc. At the same time, the Revenue has not disputed the sales turnovers declared by the assessee or closing stock as per the books. Without purchases there cannot be sales. The Hon'ble Jurisdictional High Court in the case of Pr. CIT(A) Vs. Paramshakti Distributers Pvt. Ltd. in ITA No.143/2017 decided on 15/7/2019 has held that entire alleged bogus purchases cannot be added. It is only the profit element embedded



in such purchases that has to be brought to tax. Taking into consideration entity of facts the suppressed profit in unproved purchase is estimated @ 8% of such purchases. We direct the AO to restrict the additions on account of bogus purchases to 8%. The appeal of the assessee is partly allowed.

7. No submissions were made by the learned AR on any other ground/additional ground of appeal.

8. In the result, appeal of the assessee is partly allowed.

ITA No.2019/MUM/2021

9. The learned AR submits that the facts in the present appeal are identical to the facts in ITA No.1495/MUM/2020 (supra). The learned AR submits that in the impugned order dated 05/08/2019 for AY 2009-10 the CIT(A) confirmed the addition made in the assessment order on account of alleged bogus purchases. During assessment proceedings the AO held that the assessee has indulged in obtaining bogus purchases bills. The AO held that the assessee failed to furnish confirmations from M/s Raj Traders and M/s Blueline Enterprises. The notices issued by the AO u/s 133(6) of the Act were never responded by the aforesaid parties. The AO made addition of the entire alleged bogus purchases aggregating to Rs.49,14,377/- from the aforesaid parties. The assessee carried the issue in appeal before the CIT(A). The CIT(A) confirmed the assessment order making addition of 100% of bogus purchases. The learned AR submits that entire alleged bogus purchases cannot be added.

10. Per contra, the learned Departmental Representative (DR) vehemently defended the impugned order and prayed for dismissing the appeal of the assessee.



11. Both sides heard. The addition has been made by the authorities below as the assessee failed to discharge its onus in proving genuineness of the purchases and the dealers from whom purchases were made. Nevertheless, the sales declared by the assessee were accepted by the Department. Without purchases, there could not have been sales, therefore, it is the profit element embedded in such unproved purchases that has to be brought tax. For the reasons stated while deciding appeal of the assessee in ITA No.1495/MUM/2020, the addition on account of bogus purchases is restricted to 8% of such purchases. We hold and direct accordingly. The appeal of assessee is partly allowed.

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

Order pronounced in the open court on Friday the 11th day of November 2022.

Sd/-

(S RIFAUR RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIALMEMBER

मुंबई/Mumbai,

दिनांक/Dated: 11/11/2022

MAHESH R. SONAVANE

प्रतिलिपी अग्रेषित 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 प्रतिनिधी, आय. अपी. अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाईल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)/
Sr. Private Secretary
ITAT, Mumbai