

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 5938/Mum/2014
(A.Y: 2010-11)

M/s MBM Tubes Pvt Ltd Mohanlal Jain & Co, CA Office No. 10, Chartered House, Ground Floor, DR CH Street, Marine Lines Mumbai – 2.	Vs.	ITO – 5(2)(3) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFCM4177L		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Shri Chetan M. Kacha.DR

Date of Hearing	09.11.2022
Date of Pronouncement	21.11.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order passed by the Commissioner of Income Tax (Appeals)CIT(A)-9, Mumbai passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

1. On the facts and in the circumstances of the case and in Law the Honble CIT(A) erred in treating the genuine purchases as bogus by taking peak credit of purchase parties listed on MVAT site as un explained purchases of Rs.55,80,857/- as unexplained U/sec69C of the IT Act and the reasons assigned for doing are wrong and contrary to the provision of Income Tax and Rules made there under.
2. Your Appellant Crave,leave to add,alter,amend,or modify any or all grounds of appeal on or before the date of hearing.

2.The brief facts of the case are that the assessee company is engaged in the business of manufacturing of ferrous and non-ferrous metals. The assessee has filed the return of income for the A.Y 2010-11 on 21.09.2010 disclosing a total loss of Rs. 35,80,615/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance to notice, the Ld.AR of the assessee appeared from time to time and submitted the details and filed the financial statements. The Assessing Officer (AO) in course of hearing proceedings found that the assessee has disclosed unsecured loans of Rs.1,19,46,981/-

and the details were called for. In compliance the assessee has submitted the information and the AO in order to check the identity, creditworthiness and genuineness of the transaction has called for the income tax return of the lenders and notice u/s 133(6) of the Act was issued. But the said notices were un served and the inspector found that nobody was available in the said address. The assessee was informed vide letter dated 14.03.2013 on the facts of non compliance and the assessee has submitted the details with respect to the unsecured loans and the A.O was not satisfied with the information and treated the amounts as unexplained cash credit and made addition of Rs.1,19,46,981/-.

3.Further the AO has received information from the DGIT(Invg) that the assessee has obtained accommodation entries from the six parties aggregating to Rs.1,16,37,634/- and the AO to test check the genuineness of the transactions has called for the various details and issued show cause notice to treat this transactions as bogus transactions, whereas the assessee has submitted the details and filed the letter explaining the nature of the activity,

facts and details to support the genuineness of the transactions. But the AO was not satisfied with the explanations filed by the assessee and have doubted the genuineness of the business transactions and made an addition on account of bogus purchases of Rs.1,16,37,634/- and finally assessed the total income of Rs.2,35,8,620/- and passed the order u/s 143(3) of the Act dated 29.03.2013.

4. Aggrieved by the order the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO and has dealt on the facts with respect to unsecured loans and deleted the addition u/s 68 of the Act. On the second disputed issue with respect to bogus purchases the CIT(A) has dealt on the transactions on the peak credit basis and restricted the addition to the extent of Rs.55,80,857/- and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal with the Honble Tribunal

5. At the time of hearing, none appeared on behalf of the assessee. The Ld.DR submitted that the assessee

has not proved the genuineness of the purchases and has not produced the parties in the assessment proceedings and supported the order of the CIT(A).

6. We heard the Ld. DR submissions and perused the material on record. The sole disputed issue challenged by the assessee that the CIT(A) has erred in confirming the purchases transactions as bogus and worked out the peak credit of the purchase parties at Rs.55,80,857/-. Whereas the assessee has made a disclosure of these transactions in the books of accounts and the assessee has dealt in the ferrous and non ferrous materials. We find on perusal of the Assessment Order, the Assessing Officer has made addition of the alleged purchases as there is no proper compliance. Whereas the assessee has made bogus purchases from the dealers and in turn it provides savings to the assessee in nonpayment of state taxes. We considered the facts and circumstances and the decisions of the Honble High Court and the Honble Tribunal in the identical cases and the judicial precedence were estimating the profit element embedded @ 12.5% of doubtful/ bogus purchases was accepted. We find that the assessing

officer has not doubted the sales and we rely on the ratio of decision of Hon'ble Jurisdictional High Court in the case of CIT v. Nikunj Eximp (216 Taxman.com 171) and Honble Gujarat High court in CIT Vs. Simit P Sheth (2013) (356 ITR 451). Accordingly, we restrict the addition to the extent of 12.5% of the bogus purchases and modify the Ld.CIT(A) order sustaining the addition @ 12.5% of purchases and partly allow the grounds of appeal of the assessee.

7. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 21.11.2022.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 21.11.2022

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)

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4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai