

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

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 1449/MUM/2021
Assessment Year: 2008-09

Mr. Dhanesh Mulji Gala,
137, 1st floor, Kika Street,
Gulalwadi,
Mumbai-400004.

PAN NO. AAAFP 1969 L
Appellant

ITO WD 19(1)(4),
Mumbai.

Vs.

Respondent

ITA No. 1456 to 1458/MUM/2021
Assessment Year: 2009-10 to 2011-12

Dhanesh Trading Co.
137/139, 1st Floor, Kika Street
Gulalwadi,
Mumbai-400004.

PAN NO. AAAFD 1264 H
Appellant

ITO WD 19(1)(4),
Mumbai.

Vs.

Respondent

Assessee by
Revenue by

: Mandar Vaidya
: Ms. Indira Adakil, DR

Date of Hearing : 06/07/2023
Date of pronouncement : 10/07/2023

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against separate order passed by the Ld. Commissioner of Income-tax (Appeals)-7, Mumbai [in short 'the Ld. CIT(A)'] in the case of Shri Dhanesh



MuljiGalafor assessment year 2008-09 and Dhanesh Trading Company for assessment years 2009-10 to 2011-12 respectively. These appeals were adjudicated by the Tribunal earlier however impugned orders being *ex-parte*, the Tribunal vide order dated 09.06.2023 in MA No. 119 to 122/Mum/2023 have recalled the earlier order and the appeals were accordingly fixed for fresh hearing.

2. Being a common issue in dispute involved in these appeals same were heard together and disposed off by way of this consolidate order for convenience and avoid repetition of facts.

3. First of all, we take up the appeal of the assessee Shri Dhanesh Mulji Gala in ITA NO. 1449/Mum/2021 for assessment year 2008-09. The grounds raised by the assessee are reproduced as under:

1. *The Ld. AO erred in ignoring the assessee's contention, without verification that the Name of supplier Viz. Shree Sundha Steel Pvt. Ltd. does not figure in the List of Hawala Dealers released by the Sales Tax dept. The Id. AO also failed to verify the Assessee's claim that supplier Shree Sundha Steel Pvt. Ltd. was regularly paying his VAT liability & filing MVAT return upto 31.03.2012.*
2. *On merits, the Ld. AO erred in ignoring the Basic & Legal Evidences in the form of Tax Invoices, Delivery Challans, Stock Inward & Outward Register, Bank Statements, Ledger A/cs, Sales Tax Challans, Sales Tax Returns, Audited Books of Accounts, Tax & MVAT Audit Report.*



3. *The Ld. CIT (A) fell in error of law in not appreciating that the documents/ information relied upon the Ld. AO were never confronted to the assessee. The statements recorded behind the Assessee's back were used against him by the Ld. AO and also the Cross Examination of the Third Party was not provided by the Id. AO in spite of specific request & thereby Ld. AO has disregarded the ratio laid down in Dhakeshwari Cotton Mills 26 IT 996 (SC), R. W. Promotions 376 ITR 342 (BOM)(2015), Tristar Jewellery Exports Pvt. Ltd. IT No. 8292/ Mum/2011 MITAT Mumbai - 2015).*
4. *The Ld. AO failed to give set off of Book GP of 5.16% against the Ad-hoc rate applied of 12.5% while computing the Additional Profit. The reliance is placed on Ratnagiri Stainless (P) Ltd. 80 taxmann.com 265 ITAT, Mumbai. In the said case the Credit of Book GP was allowed from the Ad-hoc rate applied of 12.5%.*

4. Briefly stated facts of the case are that in view of the information from the Sales Tax Department that assessee made bogus purchase of ferrous metal amounting to Rs.43,34,096/- from Shree SundhaSteel Pvt. Ltd., the Assessing Officer in the assessment completed u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act') made addition for 12.5% of the amount as non-genuine purchases. The relevant finding of the Assessing Officer is reproduced as under:

"10. Now, in the given facts and circumstances of the case, it is held that the assessee has indulged in non-genuine transaction. The intention of indulging in such activity is to suppress the true profits and to reduce the tax liability. Therefore, an addition on account of a higher margin of profit would be fair and equitable. I am of the considered opinion that, it would be just and fair, if the profit element embedded in such purchases is taken as the profit earned from



purchases shown to have been made from the non-existent parties. Therefore, an amount of Rs. 541762/- being 12.5% of the total non-genuine purchases of Rs. 4334096/- is added to the total income of the assessee as profit earned from such purchases. Proceedings under 274 r.w. 271(1)(c) are separately initiated for furnishing inaccurate particulars of income, leading to concealment of income chargeable to tax.”

5. On further appeal, the Ld. CIT(A) upheld the validity of the reassessment proceedings as well as the disallowance made by the Assessing Officer.

6. Before us, the Ld. Counsel of the assessee referred to ground No. 4 of the appeal and submitted that the assessee had already declared gross profit of 5.16% against ad-hoc @ 12.%% applied by the Assessing Officer and therefore, benefit/set off of the said rate of the gross profit should be allowed, following the decision of the Coordinate Bench of the Tribunal in the case of **Ratnagiri Stainless (P) Ltd. 80 taxmann.com 265** Mumbai.

7. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. It is undisputed that the assessee has declared gross profit on the transactions carried out during the year under consideration but in respect of bogus purchases from the party namely Shree Sundha Steel Pvt. Ltd, the Assessing Officer has estimated separate profit @ 12.5%, in addition to profit on said transaction already declared by the assessee in the books of accounts. In our opinion, the request of



the assessee is justified and assessee is eligible for relief of the amount of gross profit on the said purchase transaction already declared by in its books of account, otherwise addition to the extent of gross profit already declared would be double addition, which is not permitted in law. Accordingly, we direct the Assessing Officer to determine the gross profit qua the purchase transaction from Shree Sundha Steel Pvt. Ltd. declared in the books of accounts and give set off of the same against profit 12.5% assessed and upheld by the Ld. CIT(A). The ground No. 4 of the appeal of the assessee is accordingly allowed. The other grounds were not argued by the Ld. Counsel of the assessee and accordingly same are dismissed as infructuous.

8. The identical grounds for allowing set off of gross profit declared in the books of accounts qua the transaction of bogus purchase have been raised in other appeals of Dhanesh Trading Company for assessment years 2009-10 to 2011-12. Therefore, following our finding in ITA No. 1449/Mum/2021 for assessment year 2008-09 in the case of Dhanesh Mulji Gala, the relevant grounds raised in those appeals are decided mutatis mutandis and other grounds raised , which have not been argued are accordingly dismissed as infructuous.



9. In the result, the four appeals filed by the assessee's are allowed partly.

Order pronounced in the open Court on 10/07/2023.

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 10/07/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai