

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

SHRI N. K. CHOUDHRY, JM

1. I.T.A. No. 2268/Mum/2023
(Assessment Year: 2009-10)
- &
2. I.T.A. No. 2269/Mum/2023
(Assessment Year: 2010-11)
- &
3. ITA No. 2270/Mum/2023
(Assessment Year: 2011-12)

Shri Nirav P. Doshi

301, Parth Plaza, Opp. Royal
College, Veer Savarkar Road,
Dombivali (E), Thane 421201,
Mumbai
PAN No. **AIXPD 7083 P**

Vs.

**ITO, Ward 3(3),
Kalyan**

Appellant)

:

Respondent)

**Appellant by
Respondent by**

:

Mr. Shashank Mehta, Ld. Counsel
Ms. Smitha V. Nair, Ld. Sr. DR

**Date of Hearing
Date of Pronouncement**

:

04.10.2023 & 05.10.2023
25.10.2023

ORDER

Per N. K. Choudhry, Judicial Member:

The Assessee/appellant herein has preferred these appeals against the orders even dated 16.03.2023 impugned herein passed by National Faceless Appeal Centre, Delhi {in short 'NFAC '}/Ld. Commissioner of Income Tax (Appeal) {in short 'Ld. Commissioner'} u/s 250 of the Income Tax Act 1961 (in short 'the Act') for AYs 2009-10 to 2011-12.

2. As the impugned orders are ex-parte and the issues involved in the appeals under consideration almost identical, therefore, for sake of brevity, the same are being disposed off by this composited order.

3. For brevity ITA No. 2268/Mum/2023 has been taken as a lead case in which at the outset, I observe that there is a delay of 38 days in filing the instant appeal, on which the Assessee has claimed that though the impugned order was uploaded on the e-mail filing portal and sent through e-mail as well, however, the e-mail was missed by the assessee as the same was received in sundry e-mail but not in regular e-mail folder. Somehow somewhere in the month of May, 2023 the Assessee checked the instant appeal's proceedings at e-filing portal and then only came to know about the passing of the impugned order and thereafter immediately on 22nd June, 2023 filed the instant appeal but with the delay of 38 days. As there is nothing contrary against the claim of the Assessee, hence considering the said claim of the Assessee as bonafide and genuine, the delay of 38 days in filing of the instant appeal is condoned.

4. Coming to the merits of this case, the Assessee derives its income from business of trading in Iron Steel Pipe, Pipes Fitting etc. under the name and style of M/s Paras Sales Corporation (Prop. Nirav P. Doshi) and during the year under consideration by filing its return of income dated 29th Sept, 2009, declared total income of Rs. 3,68,430/- and has also shown gross profit of Rs. 18,91,057/- on the total turnover of Rs. 1,57,89,075/-, which worked out to 11.97%. The AO on the basis of the information received from Sales Tax Department, Maharashtra with regard to *certain persons involved in providing entries for tax purchase bills to a large number of tax payers and the Assessee has also obtained tax purchase bills from various parties totaling to Rs. 5,97,465/-*, reopened the case of the Assessee by recording reasons u/s 147 of the Act and asked the Assessee to substantiate its claim and issued notices u/s 133(6) of the Act to

supplier parties, which returned back as unserved. Even the Assessee on being asked, also failed to bring supplier parties before the AO. The AO therefore considering the peculiar facts *“that Income Tax Inspector reported that no business activities were carried out at the addresses of the other concerns and the Assessee also not produced any reconciliation of quantity and quality wise details of purchase, sale and stock in trade for the year under consideration to establish its claim. Audit Report clearly mentions that the Assessee has not maintained the stock register”* ultimately disallowed the entire claim of purchase of Rs. 5,97,465/- and added the same in the total income of the Assessee u/s 69C of the Act, which stands affirmed by the Id. Commissioner in first appeal.

The Id. AR, Mr. Shashank Mehta submitted that a reasonable profit element can be estimated by considering various judgments passed by Hon'ble Co-ordinate Benches of the Tribunal, wherein identical trading business and circumstances, have been considered by the Tribunal.

I observe that the Hon'ble Co-ordinate Benches of the Tribunal in the cases of Sh. Ketan Jaysukhlal Shah vs ITO, Ward 20(2)(3), Mumbai {ITA No. 1657/Mum/2023 decided on dated 31/08/2023} and Sh. Ramesh R. Jain vs. ITO-19(3)(1), Mumbai {ITA No. 8016/Mum/2019 decided on dated 14/09/2021} have also dealt with identical trading business as involved in this case and by holding that only profit element can be added but not the entire bogus purchases, restricted the addition/disallowance to the tune of 5% of the alleged bogus purchases, hence, respectfully following the dictums in the said cases, I am inclined to restrict the addition to the tune of 5% of the bogus purchase of Rs. 5,97,465/- and hence the AO is accordingly directed to apply 5% of the aforesaid amount as profit and add the same in the income of the Assessee. Consequently, the instant appeal filed by the Assessee is partly allowed.

5. In the result, all the three appeals filed by the Assessee are partly allowed, on the same terms.

Order pronounced in the open court on 25th Oct, 2023.

Sd/-
(N. K. Choudhry)
Judicial Member

मुंबई Mumbai;दिनांक Dated : 25/10/2023
PS, Ganesh Kumar (on tour)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
4. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

.उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**