

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.121/Mum/2024
(Assessment Year :2008-09)**

Shri Himanshu Dilip Jain 173, Kika Street Gulal Wadi Mumbai - 400 004	Vs.	Income Tax Officer- 19(1)(5) Mumbai Room No.228, Matru Mandir, Tardeo, Grant Road, Mumbai - 400 007
PAN/GIR No.AGHPJ1641F		
(Appellant)	..	(Respondent)

Assessee by	Shri Mahaveer Jain a/w. Shri Anand Kanse
Revenue by	Shri P.D. Chougule
Date of Hearing	16/05/2024
Date of Pronouncement	22/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 23/11/2023, passed by Ld. CIT(A)-49, Mumbai for the quantum of assessment passed u/s.147 for the A.Y.2008-09 which was an appeal filed by the assessee against order passed by the ld. AO u/s.143(3) r.w.s. 147 dated 16/03/2015.

2. This appeal was filed on 30/04/2015 and finally the Id. CIT(A) has decided this appeal after more than 8 ^{1/2} years. Despite that, the Id. CIT(A) had stated that assessee had not appeared on various dates of hearing by notices sent through ITBA portal without even ensuring whether notices have been sent at a proper address or not or through e-mail.

3. Be that as may be, here assessee had declared income of Rs.11,55,433/- on 30/09/2008 which was duly processed u/s.143(1). Later on based on some information received from Sales Tax department that assessee has taken purchases of Rs.2,05,39,325/- from non-genuine parties, assessee's case was reopened u/s.148. The Id. AO has applied GP rate of 12.5% on the total purchase amount of Rs.25,67,416/-. The Id. CIT(A) has confirmed such addition made by the Id. AO in exparte order.

4. After hearing both the parties and on perusal of the material placed on record it is seen that the only issue is whether the GP rate of 12.5% is justified on the alleged bogus purchases, because admittedly the source of the purchases are from the books of accounts and through banking channels and corresponding sales has not been disturbed. Id. Counsel submitted that assessee has already disclosed GP rate of 6.47% in this year which also includes GP rate of these alleged bogus purchases. Thus, even if 12.5% is applied, then GP rate already disclosed on such purchases of 6.47% has to be removed and at the most only 6% of additional amount of GP rate can be made. We agree with the contention of the Id.

Counsel as assessee has already disclosed 6.4% GP rate on trading of ferrous and non-ferrous metal, wherein GP rate is around 4-6%, then at the most further GP has to be imputed then, 6% over and above what assessee has disclosed is sufficient. Accordingly, the addition is reduced by applying 6% GP rate on purchase amount of Rs. 2,05,39,325/- accordingly, appeal of the assessee is allowed partly.

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

Order pronounced on 22nd May, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai; Dated 22/05/2024
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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,

(Asstt. Registrar)
ITAT, Mumbai