

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, G, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G", MUMBAI**

**Before Shri Saktijit Dey, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NO.2993/Mum/2013
Assessment Year: 2005-06
&
ITA NO.2994/Mum/2013
Assessment Year: 2006-07
&
ITA NO.3629/Mum/2012
Assessment Year: 2007-08**

ITO WD 1(4), Thane	<u>बनाम/</u> Vs.	Shri Gopikishan C. Mundhara, Prop. Of M/s. D.P. Mundhara & Co. 211, Dewan Tower, Bldg. No.4, Above Kubera Hotel, Vasai-Manikpur Road, Vasai Thane
(Revenue)		(Respondent)
P.A. No.ABLPM6182B		

Revenue by	Shri Nitin Waghmode (DR)
Respondent by	None

सुनवाई की तारीख / Date of Hearing :	19/01/2016
आदेश की तारीख / Date of Order:	12/02/2016

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

These appeals have been filed by the Revenue against the separate orders of Ld. Commissioner of Income Tax (Appeals),

Mumbai {(in short 'CIT(A)}}, for the assessment years 2005-06, 2006-07 & 2007-08 involving common issues.

2. During the course of hearing, none appeared on behalf of the Respondent and arguments were made by Shri Nitin Waghmode, Departmental Representative (DR) on behalf of the Revenue.

First, we take up ITA No.3629/Mum/2012 For A.Y. 2007-08

3. The brief background of the issue involved in this appeal is that during the year under concern, the assessee was engaged in the trading in Iron and Steel scrap and in a small quantity of trading in clothes. During the course of assessment proceedings, the AO asked the assessee to file the details of sundry creditors, in response to which requisite details were filed by the assessee. Thereafter, the AO called for information u/s 133(6) from the parties from whom the purchases were done by the assessee. The AO did not receive satisfactory response with respect to some of the parties and therefore, the purchases made by the assessee from these forms were treated as in-genuine and were disallowed as unexplained purchases and were added to the income of the assessee in the assessment order.

3.1. Being aggrieved, the assessee filed an appeal before the Ld. CIT(A). In the appellate proceedings, the assessee made

detailed submission with respect to each of the suppliers and submitted details and evidences to support that purchases made by the assessee were genuine. It was alternatively submitted by the assessee that in any case, sales done by the assessee have been accepted, and in absence of purchases, sales were not possible, and therefore, the AO could not have disallowed the entire purchases.

3.2. The Ld. CIT(A) considered the submissions of the assessee in detail, but he was not satisfied with the first contention of the assessee that whole of the amounts claimed to have been paid by the assessee for making purchases were genuine.

3.3. However, Ld. CIT(A) found merit in the alternative submission of the assessee and held that in absence of purchases, sales were not possible. The relevant findings of the order of the Ld. CIT(A) are reproduced below:

“4.4. From the facts and circumstances explained above, it appears that the goods purchased from the above parties involved are not conclusively proved to be genuine. On the other hand, there is a merit in the contention of the appellant that if the purchases are bogus, the sales should also be bogus. If the sales of the appellant are genuine then the purchases of materials also have to be genuine as without purchases there cannot be any sales.

4.4.1. Accepting the sales without there being any corresponding purchases would lead to an absurd situation of sale of materials without any purchases. In the instant case also, the A.O. is not disputing the sales but treating the purchases as bogus would lead to the same absurd situation. If the sales are genuine then the fact has to be admitted that the appellant has

made the purchases.

4.4.2. In the business of trading in steel and scrap, it is a general practice that purchases are made from an open market and thereafter the bills are arranged. The fact of existence of bogus bills does not in any way prove that there are no corresponding purchases. Since the purchase bills produced are from non-existent parties, it is difficult to verify the rates applied for the purchases mentioned in these bills, which may be inflated to reduce the profits. In such a situation it would be fair and reasonable, if, part of such purchases are disallowed.

3.4. Thereafter, Ld. CIT(A) has discussed the judgment of coordinate bench in the case of Shri Sanket Steel Traders vs ITO, (ITAT, Ahmadabad) and after analyzing the judgment he concluded as under:

“In view of the facts and circumstances explained above and respectfully following the decision of the ITAT, Ahmadabad on an identical issue, it would be fair and reasonable if the disallowances of purchases made by the appellant is restricted to 12.5% on the total purchases disallowed by the AO as the quantum of purchases disallowed is quite high in the instant case. Accordingly, the AO is directed to disallow 12.5% of the total purchases out of the total purchases made from M/s. Bhagwati Steels, M/s. Bhavana Steel Traders and M/s. Samruddhi Exim Pvt. Ltd. for the year under consideration.”

3.5. Similarly, with regard to purchases made from the other party namely M/s. Shree Karni Textiles amounting to Rs.3,81,136/-, it was found by the Ld. CIT(A) that complete

bills and other documentary evidences have been furnished by the assessee and therefore, disallowance made by the AO was fully deleted with regard to the said party, by observing as under:

“6.1. The above arguments of the AR of the appellant have been considered and I intend to agree with these arguments. The appellant has produced the ledger account of M/s. Shree Karni Textiles along with the copies of the purchase bills with corresponding delivery challans. The balance confirmation statement of M/s. Shree Karni Textiles has been submitted during the assessment proceedings. The independent verification of the party has been carried out by the AO through his inspector and the party was found to be in existence at the given address and a finding to this effect has been recorded in the assessment order at page 9. All these facts have not been controverted by the AO and still proceeded to disallow the purchases only on the ground that the bills issued by the party are almost serially numbered which indicate that the bills are not proper and also does not contain telephone number. This cannot be taken as basis for disallowing the purchases.

6.2. In view of the fact that the details of the purchases have been properly recorded in the books of accounts and duly supported by the documentary evidences and the existence and confirmation of the party is placed on record, the purchases cannot be disallowed only on the ground that the bills are serially numbered and does not contain the telephone number. Therefore, the action of the AO disallowing the purchases made from M/s. Shree Karni Textiles is not justified and cannot be sustained. The addition made amounting to Rs.3,81,136/- disallowing the purchases made from M/s. Shree Karni Textiles, is hereby deleted.”

3.6. During the course of hearing it was mentioned by the Ld. DR that he did not have any grievance with regard to relief

given with respect to purchase made from M/s. Shree Karni Textiles. Thus we confirm action of Ld CIT(A) in deleting this addition. With respect to part relief given by him for other parties, the Bench asked Ld. DR to point out if there was anything wrong in the findings of Ld. CIT(A) with regard to disallowance sustained by Ld CIT(A) @ of 12.5% of the total purchases. In response, nothing wrong was pointed out by Ld. DR in the reasoning given by Ld. CIT(A). It is noted that no adverse or incriminating material, whatsoever, has been brought on record by Ld AO in assessment proceedings or by Ld DR before us, to show that these purchases were bogus. The factual findings recorded by the Ld. CIT(A) that all the purchases and sales were properly backed up with quantitative re-conciliation, were not controverted by the Ld. DR. In view of the detailed findings recorded by the Ld. CIT(A) which remain uncontroverted, unchallenged and un-rebutted before us, and in view of peculiar facts of this case, we have no other option but to uphold the order of Ld CIT(A). Thus, grounds raised by the Revenue are dismissed.

Now, we take up ITA Nos.2993 & 2994/Mum/2013 For A.Ys. 2005-06 & 2006-07:

3.8. It has been submitted by Ld. DR that facts and issues involved in these two years are identical to A.Y. 2007-08. The Ld. CIT(A) has followed his order for A.Y.2007-08 while deciding appeals for these two years. Since, appeal for A.Y. 2007-08 has been dismissed, thus, following our order appeals for these two years are also dismissed.

4. In the result, all three appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 12.02. 2016.

Sd/-
(Saktijit Dey)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 12/02 /2016

Patel, P.S./नि.स.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai