

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No.7598/MUM/2016
(Assessment Year 2009-10)

M/s. Sion Steels,
A-159, Naik Nagar, Near Maharashtra-
Weigh Bridge, LBS Marg,
Sion (W), Mumbai 400 022.
PAN:AABFS 7718L

..... Appellant

Vs.

The Income Tax Officer, Ward 26(3)(2),
Pratyakshyakar Bhavan,
Bandra Kurla complex,
Bandra(E),
Mumbai -400 051

.... Respondent

Appellant by : Shri Pravin N. Shah
Respondent by : Shri A.K.Kardam
Date of hearing : 11/05/2017
Date of pronouncement : 17/05/2017

ORDER

The captioned appeal filed by the assessee pertaining to assessment year 2009-10 is directed against an order passed by CIT(A)-38, Mumbai dated 30/09/2016, which in turn, arises out of an order passed by the Assessing Officer under section 143(3)r.w.s.147 of the Income Tax Act, 1961 (in short 'the Act') dated 23/03/2015.

2. Although in its Memo of appeal, assessee has raised multiple Grounds of appeal, but the short point argued at the time of hearing was with regard to the quantum of addition maintainable.

3. In brief, the relevant facts are that the assessee is a partnership firm engaged in the business of dealer in iron and steel. Based on the information received from the Sales Tax Department, the Assessing Officer treated the purchase of Rs.19,93,318/- made from three parties as bogus. Accordingly, the total income was determined by adding the aforesaid amount to the returned income. The appeal of the assessee before the CIT(A) was also unsuccessful, against which assessee is in appeal before the Tribunal.

4. Before me, the limited plea raised by the assessee is to the effect that following the ratio of the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth, 356 ITR 451(Guj), what is sustainable is only the addition with regard to the element of profit in such purchases, and, therefore, the Ld. Representative for the assessee submitted that an addition equivalent to a profit rate of 12.50% of the impugned purchases be sustained.

5. On the other hand, the Ld. Departmental Representative pointed out that assessee had failed to produce the delivery challans or the documents for the transportation of goods to prove the genuineness of the impugned purchases and, therefore addition has been correctly sustained by the CIT(A).

6. I find that before the CIT(A) assessee filed stock statement of movement of goods, copies of VAT return, copy of audit report under Sales Tax, etc. Even in the course of hearing before me assessee had referred to the copies of accounts of three concerns, from whom the impugned purchases have been effected alongwith invoices. The assessee also has referred to the quantitative details of the goods traded during the year. On all these basis, it is sought to be canvassed that that even if assessee fails to

prove the purchases in question, what can be assessed is only the profit element of such purchases as laid down by the Hon'ble Gujarat High Court in the case of Simit P. Sheth(supra). In my considered opinion, under similar circumstances the Hon'ble Gujarat High Court upheld the plea of the assessee for an addition equivalent to the profit element embedded in such purchases. Considering the aforesaid ratio, in my view, it would be in the fitness of thing that the addition is sustained to the extent of a profit of 12.50% on the impugned purchases. Accordingly, the Assessing Officer is directed to retain an addition to the extent of 12.50% of the impugned purchases and delete the balance.

7. In the result, appeal of the assessee is allowed, as above.

Order pronounced in the open court on 17/05/2017

Sd/-
(G.S. PANNU)
ACCOCUNTANT MEMBER

Mumbai, Dated 17/05/2017
Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai