

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम. बालगणेश, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VP AND SHRI M. BALAGANESH, AM

आयकर अपील सं./ ITA No. 5618/Mum/2017

(निर्धारण वर्ष / Assessment Year 2011-12)

The Income Tax Officer, 20(1) Room No. 121, 1 st Floor Piramal Chambers, Parel, Mumbai-400 012	बनाम/ Vs.	Shri Ismailbhai M. Lohkandwala, 9, Thliz CHS, St. John Baptit Road, Bandra, Mumbai-400 050
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. ABIPL3610Q		

अपीलार्थी की ओर से/ Appellant by	:	Ms. Shreekala Pardeshai, DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri C.V. Jam, AR

सुनवाई की तारीख / Date of hearing:	10.06.2021
घोषणा की तारीख / Date of pronouncement:	15.06.2021

आदेश / ORDER

एम. बालगणेश, लेखा सदस्य के द्वारा /

PER M. BALAGANESH, AM:

This appeal of assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-32, Mumbai [in short CIT(A)], dated 27.06.2017. The assessment was framed by the Income Tax Officer, Ward 20(1)(2) (in short ITO/ AO) for the A.Y. 2011-12 vide order dated 09.03.2016 under section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The effective issue to be decided in this appeal of the Revenue is as to whether the learned CIT(A) was justified in restricting the addition on account of profit element at the rate of 2.42% of the alleged bogus purchases from tainted parties in the facts and circumstances of the case of the instant case.

3. We have heard the rival submissions and perused the materials available on record. We find that the assessee is an individual engaged in the business of trading in Iron and Steel. It is not in dispute that the assessee had indeed made purchases from seven parties totaling to ₹1,75,16,051/-, the details of which are listed in page 2 of the assessment order. The learned Assessing Officer sought to examine the veracity of the said purchases. The assessee produced copy of ledgers, bank statements related to the purchase evidencing payments made to said parties by account payee cheques. The learned Assessing Officer issued notices under section 133(6) of the Act to all the parties, which were duly served but no replies were received from the said parties in response thereon. The learned Assessing Officer directed the assessee to produce the aforesaid parties, which was also not complied with by the assessee. Accordingly, the learned Assessing Officer proceeded to treat 100% of outstanding purchases (credit purchases) to the tune of ₹25,44,256/- and 25% of hawala purchases to the tune of ₹1,49,71,795/- as profit element embedded in the value of such purchases and accordingly, made addition of ₹62,87,205/- in the assessment.

4. The learned CIT(A) by giving the categorical finding that the sales made by the assessee out of the aforesaid purchases has not

been doubted by the Assessing Officer and hence, only profit element could be brought to tax. In respect of credit purchases made by the assessee to the tune of ₹25,44,256/-, the learned CIT(A) observed that those purchases were made by the assessee on credit and the balance payable to such suppliers have been shown as outstanding liabilities in the balance sheet of the assessee and the same had not been written back to the income by the assessee. Effectively, the learned CIT(A) held that the parties from whom credit purchases have been made are genuine and accordingly deleted the addition made in the sum of ₹25,44,256/-.

5. With respect to the remaining purchases to the tune of ₹1,49,71,795/- made from other parties who were treated as tainted dealers, the learned CIT(A) observed that the assessee has already recorded gross profit of 2.42% in its books and directed the learned Assessing Officer to adopt the same as profit element embedded in the value of such purchases for the purpose of making addition. Aggrieved by this order, the Revenue alone is in appeal and assessee has not preferred any appeal.

6. Before us, the learned DR vehemently argued that the learned CIT(A) ought to have estimated the profit at the rate of 12.5% of the value of purchases which has been consistently made by this Tribunal in various other cases. We find that assessee is engaged in iron and steel industry and moreover, assessee is only a trader in Iron and Steel. The assessee has disclosed gross profit of 2.42% in its books which has been accepted by the Revenue. It is not in dispute that sales made out of the purchases of ₹1,75,16,051/- from seven parties has

not been doubted by the Revenue. For the purpose of determining the profit element embedded in the value of such purchases, taking into consideration the industry in which the assessee is dealing with, we deem it fit appropriate to estimate the profit at 5% of the value of such purchases as income of the assessee, which in our considered opinion, would meet the ends of justice. Accordingly, the ground raised by the Revenue is partly allowed.

7. In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the open court on 15.06.2021.

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

Sd/-

(एम. बालगणेश / M. BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 15.06.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

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

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

आदेशानुसार/ BY ORDER,

व. निजी सचिव /Sr. Private Secretary
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

