



ITA No.2682/Mum/2019
KhimchandOkchand. Bhansali
Assessment Year-2009-10

आयकरअपीलीयअधिकरण“एक-सदस्यमामला” न्यायपीठमुंबईमें।

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

माननीयश्रीविकासअवस्थी, न्यायिकसदस्यएवं

माननीयश्रीमनोजकुमारअग्रवाल ,लेखासदस्यकेसमक्ष।

**BEFORE HON’BLE SHRI VIKAS AWASTHY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through video conferencing mode)**

आयकरअपीलसं./ I.T.A. No.2682/Mum/2019
(निर्धारणवर्ष / Assessment Year:2009-10)

KhimchandOkchand Bhansali 601/602, Siddesh Jyoti Baram Street Mumbai-400 004.	बनाम/ Vs.	ITO-Ward 19(2)(2) Matru Mandir, 2 nd Floor, Tardeo Road, Mumbai-400 007.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AFZPB-7737-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Dhaval Shah-Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri R. Bhoopathi-Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	02/09/2020
घोषणाकीतारीख / Date of Pronouncement	:	02/09/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member):-

1.1 Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-30, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)-30/19(2)(2)/666/2015-16 dated 17/08/2018* on certain grounds of appeal. Though the assessee has



raised multiple grounds of appeal, however, Ld. Authorized Representative for Assessee, Shri Dhaval Shah, drawing attention to ground no.4, pleaded for reduction in estimated addition of 12.5% keeping in view the assessee's nature of business. Our attention has been drawn to the fact that the assessee has declared Gross Profit Rate of more than 3% during the year which is normal profit rate in the assessee's line of business. No other arguments have been advanced before us. Per Contra, Ld. DR submitted that the assessee remained negligent in attending the appellate proceedings before Ld. CIT(A) despite being provided with various opportunities of being heard.

1.2 The grounds of appeal raised by the assessee read as under:

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1. The Ld. CIT(A) has erred in law and in facts in confirming the action of the assessing officer in re-opening of the assessment u/s. 147 of the Act which is invalid and bad in law.
2. The Ld. CIT(A) has erred in law and in facts in passing order without complying with principles of natural justice.
3. The Ld. CIT(A) has erred in law and in facts in confirming the action of the assessing officer in rejecting the books of accounts and making addition on estimation basis.
4. The Ld. CIT(A) has erred in law and in facts in confirming the disallowance of alleged bogus purchases of Rs.14,01,716/- being 12.50% of Rs. 1,12,13,732/- in the hands of the appellant.

2.1 We have carefully considered the rival submissions and material on record. Facts as emanating from the record are that the assessee being resident individual stated to be engaged in trading of ferrous and non-ferrous metal was subjected to an assessment u/s 143(3) r.w.s. 147 on 20/03/2015 wherein the returned income of Rs.1.91Lacs was assessed at Rs.15.94 Lacs after estimated



addition @12.5% on certain *alleged bogus purchases*. The original return of income was filed by the assessee on 22/09/2009 which was processed u/s 143(1).

2.2 Pursuant to receipt of certain information from DGIT (Inv.) / Sales Tax Department, Govt. of Maharashtra, it transpired that the assessee obtained bogus purchases bills aggregating to Rs.112.13 Lacs from as many as 11 entities, the details of which have already been extracted in para-2 of the quantum assessment order. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on 19/02/2014 which was followed by statutory notices u/s 143(2) and 142(1) wherein the assessee was directed to substantiate the purchase transactions.

2.3 Although the assessee defended the purchases by furnishing purchase invoices, bank statements evidencing payment through banking channels, quantitative details etc. but failed to produce any of the suppliers for confirmation of transactions. The assessee also failed to furnish delivery challans, transport receipts, octroi receipts etc. to substantiate the delivery of material. Accordingly, a view was taken that the purchases were inflated to suppress the true profits. Finally, Ld. AO estimated an addition of 12.5% against these purchases following the decision of Hon'ble Gujarat High court in **CIT V/s Simit P. Sheth 356 ITR 451** and completed the assessment.

2.4 Although the assessee preferred further appeal but as is evident from para-4 of the impugned order, it failed to make effective representation before Ld. CIT(A). Resultantly, the



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assessment was confirmed. The legal objection taken by the assessee against reopening the assessment was also dismissed. Aggrieved the assessee is in further appeal before us.

3. Upon careful consideration of factual matrix as enumerated in preceding paragraphs, it is quite clear that the assessee remained negligent in attending the appellate proceedings despite being provided with various opportunities of being heard. However, keeping in view of principle of natural justice and keeping in mind the facts and circumstances, we deem it fit to grant another opportunity to the assessee to represent his case before first appellate authority. Accordingly, the case stands remitted back to the file of Ld. CIT(A) for re-adjudication with a direction to the assessee to defend his case before first appellate authority failing which Ld. CIT(A) shall be at liberty to adjudicate the appeal on the basis of material on record.

4. Resultantly, the appeal stands allowed for statistical purposes.

Order pronounced on 02nd September, 2020.

Sd/-

(Vikas Awasthy)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 02/09/2020
Sr.PS:-Jaisy Varghese



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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

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