

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

BEFORE SHRI AMARJIT SINGH (ACCOUNTANT MEMBER) &
KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 141/MUM/2021 (A.Y.2011-12)

M/s Sangeeta Metal (India) 26/24, Ground Floor, 6B/1 Sindhi Lane, Mumbai-400 004 PAN : AAFFS6604P	vs	ACIT-19(3), Mumbai Room No.206, 2 nd Floor, Matru Mandir Building, Tardeo Road Mumbai-400 007
APPELLANT		RESPONDENT

Assessee represented by	Shri Romit Jain
Department represented by	Shri Pavan Kumar Beerla

Date of hearing	23/03/2022
Date of pronouncement	13/06/2022

ORDER

Per Kavitha Rajagopal (JM):

This appeal has been filed by the assessee against the order of Ld.CIT(A) dated 05/10/2018 for A.Y. 2011-12.

2. The substantial issue that has been challenged in this appeal is the reopening of the assessment under section 147 and the addition of Rs.22,00,556/- on account of possible profit element at 12.5% on account of bogus purchases made as per information from sales-tax department and other ancillary ground being interest under sections 234B and 234C alongwith penalty under section 271(1)(c) of the Act.

3. There was delay in filing the appeal. The managing partner of the assessee had filed a duly sworn in affidavit narrating the circumstances under which the appeal got delayed and prayed for condonation of delay.

4. The Ld.AR pleaded that the situation was beyond the control of the assessee and therefore, constitute a reasonable cause. He accordingly prayed that the delay may be condoned. The Ld.DR, on the other hand, strongly objected to the condonation petition.

5. Having heard both the sides on the condonation petition, we are of the view that in the interest of substantial justice, the assessee's prayer for condonation should succeed. The reasons explained for filing the appeal beyond the due date is genuine and convincing. Therefore, we condone the delay in filing the appeal and appeal is admitted for adjudication.

6. The brief facts of the case are that the assessee is a partnership firm engaged in the business of trading in non ferrous metal and its allied items. The assessee filed its return of income for the impugned assessment year on 25/09/2011 declaring total income of Rs.22,39,682/-. The assessee's case was selected for scrutiny subsequent to information received from sales-tax department relating to hawala bills and accommodation entries. It was found that assessee had purchases from 13 parties to the tune of Rs.1,76,04,450/- and subsequently assessment was reopened and assessment order under section 143(3) r.w.s. 147 of the Act was passed on 11/03/2016 determining total income at Rs.44,40,240/-. The Assessing Officer had stated that the assessee could not establish genuineness of purchases made and held that

such purchases were not genuine transactions and thereby estimated additional profit margin on such purchases of Rs.22,00,556/- at 12.5% and made addition of the same. Penalty proceedings were also initiated under section 271(1)(c). Aggrieved by this, the assessee was in appeal before the Ld.CIT(A), who confirmed the addition made by the Assessing Officer and dismissed the appeal of the assessee.

7. The assessee is in appeal before us challenging the order of the Ld.CIT(A). The Ld.AR stated that it was only the profit on account of bogus purchases that shall be taxed and not the entire purchases in itself and relied on the principle reiterated in the decision of Hon'ble Gujarat High Court in Bholanath Poly Fab Pvt Ltd 355 ITR 290(Guj). The Ld.AR further contended that this issue was squarely covered by the decision of Hon'ble ITAT Mumbai Bench in assessee's own case for A.Y. 2010-11 in ITA No.3273/Mum/2018. The Ld.AR also submitted that if the issue on merit is decided in favour of the assessee, the legal ground challenging reopening of the assessment shall not be pressed. The Ld.DR relied on the order of Ld.CIT(A) and stated that 12.5% addition on account of bogus purchases were reasonable.

8. Having heard both the Ld.representatives and perused the materials on record, we find that the Hon'ble ITAT, "SMC" Bench in ITA No.3273/Mum/2018 have dealt with similar issue, more so particularly, in assessee's own case and had ruled that when sales are not in doubt, then 100% disallowance for bogus purchases cannot be made and relied on Hon'ble jurisdictional High Court in Nikunj Eximp Enterprises Pvt Ltd 372 ITR 619 (Bom) and Principal Commissioner of Income-tax vs M. Haji Adam & Co Income Tax Appeal

No.1004 of 2016 dated 11/2/2019. We find it essential to cull out the relevant extract from the said order for ready reference as stated below:-

“6. I respectfully following the aforesaid judgement of the honourable High Court set aside the matter to the file of the assessing officer with the direction to restrict the addition as regards the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchases. Needless to add the assessee should be granted adequate opportunity of being heard. Learned Counsel of the assessee fairly agreed to the above proposition.”

9. We do not find any infirmity in aforementioned decision and thereby set aside the matter to the Assessing Officer with the direction to restrict the addition on gross profit rate of bogus purchases at the same rate as that of the genuine purchases after giving opportunity to the assessee to present its case. Further, we hold that levy of interest under section 234B and 234C are consequential and initiation of penalty under section 271(1(c) is premature.

10. Since we have decided the appeal on merits, the legal ground regarding reopening of the assessment is not adjudicated upon.

11. In the result, the appeal filed by the assessee is partly allowed. Order pronounced in the open Court on 13th June, 2022.

Sd/-

sd/-

(AMARJIT SINGH)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 13/06/2022

Pavanan

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