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

BEFORE SHRI R.C.SHARMA, AM

ITA No.4479/Mum/2017 & ITA No.4481/Mum/2017
(**Assessment Year :2009-10 & 2011-12**)

Shri Ketan Lalitchand Shah 1104, Anand Apartment, Goras Wadi Near Milap Cinema Malad-West Mumbai – 400 064	Vs.	ITO Ward- 30(2)(1) Mumbai
PAN/GIR No. AMXPS9410R		
Appellant)	..	**Respondent**)

Assessee by	Shri Haresh Shah
Revenue by	Ms. N. Hemalatha
Date of Hearing	**24/10/2017**
Date of Pronouncement	**18/01/2018**

आदेश / O R D E R

***PER R.C.SHARMA (A.M)*:**

These are the appeals filed by the assessee against the order of CIT(A)—41 dated 05/04/2017 for A.Y.2009-10 & 2011-12 in the matter of order passed u/s.143(3) /147 of the IT Act.

2. In both the years assessee has challenged reopening as well as merit of the addition made by estimating profit at 12.5%.

3. Rival contentions have been heard and record perused.

4. Facts in brief are that the assessee is engaged in the business of trading in hardware tools, bearings and general suppliers in the name and style of M/s. Trade Links. The return was initially processed u/s 143(1). Subsequently, the AO received information from DGIT(Inv.), Mumbai and

Sales Tax Department that the assessee had claimed purchases of Rs. 1,09,76,404/- from 7 parties who have been declared as hawala dealers by Sales Tax Department. These parties had issued accommodation bills without actual sale and delivery of goods. Therefore, the case was re-opened. The AO issued notice u/s 133(6) to these parties which were either returned back by the postal department or no reply was received. The assessee was asked to prove the genuineness of the purchases and to produce the parties. The assessee failed to produce the parties but furnished the ledger accounts of the purchase parties, corresponding sales, copies of purchase and sale bills and bank statements claiming payment to the purchase parties. The AO mentioned that the assessee failed to furnish supporting evidences in the form of transportation bills, delivery challan, stock register and lorry receipt. The AO held that there was every possibility of leakage of revenue as the purchases shown by the assessee during the year remained unveriflable and rejected the books of accounts as per the provisions of section 145(3) of the I T Act. Accordingly, he estimated additional profit of 12.5% on the alleged bogus purchases.

5. By the impugned order CIT(A) confirmed the action of the AO against which assessee is in further appeal before us.

6. It was argued by learned AR that assessee has already disclosed profit of 5.76% in the A.Y.2009-10 and 8.39% in the A.Y.2011-12. Accordingly, it was prayed that estimated profit should be reduced by the profit already declared by the assessee.

7. On the other hand, learned DR contended that AO has very reasonably estimated profit on bogus purchases at 12.5%, therefore no interference is required.

8. I have considered rival contentions and carefully gone through the orders of the authorities below and found from record that corresponding sales have not been declined by the AO and he has just estimated profit on the alleged bogus purchases. Statement showing comparative G.P and N.P as under:-

A.Y.	Sales	Gross Profit		Net Profit	
	Rs	Rs.	%	Rs	%
2006-07	10174278	625936	6.15	291764	2.87
2007-08	10550950	646638	6.13	311642	2.95
2008-09	13101691	781312	5.96	375528	2.87
"5009-10	17389678	992583	5.71	480369	2.76
2010-11	17151045	1163342	6.78	506071	2.95
2011-12	12308270	1032854	8.39	485771	3.95

9. It is clear from the above chart that assessee has declared GP ranging from 5.71% to 8.39% during the A.Y.2006-07 to 2011-12. Net profit declared by the assessee ranges from 2.76% to 3.95% during the A.Y.2006-07 to 2011-12. It is also clear that G.P. and N.P. or book results for the years under consideration i.e. A.Y.2010-11 to 2011-12 was better that the earlier year. Keeping in view totality of facts and circumstances of the case, we direct the AO to restrict the addition by reducing net profit

rate of 2.76% declared in the A.Y.2009-10 and 3.95% declared in the A.Y.2011-12. We direct accordingly.

10. In the result, appeals are allowed in part in terms indicated hereinabove.

Order pronounced in the open court on this 18/01/2018

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 18/01/2018
Karuna Sr.PS
Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai