

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-1 : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA Nos.2385 & 2386/Del/2019
Assessment Years: 2007-08 & 2009-10

Narender Jindal,
C-309, C Block, Tilak Nagar,
Vikaspuri, Rajouri Garden,
Delhi.

Vs ITO,
Ward-63(3),
New Delhi.

PAN: AEEPJ7166A

(Appellant)

(Respondent)

Assessee by : Shri Girish K. Shukla, Advocate
Revenue by : Ms Renu Mukherjee, Sr. DR

Date of Hearing : 17.03.2021
Date of Pronouncement : 17.03.2021

ORDER

PER R.K. PANDA, AM:

The above two appeals filed by the assessee are directed against the separate orders dated 24th January, 2019 of the CIT(A)-20, New Delhi, relating to assessment years 2007-08 and 2009-10, respectively.

2. Since identical grounds have been raised by the assessee in both these appeals, therefore, these were heard together and are being disposed of by this common order, for the sake of convenience.

3. Although a number of grounds have been raised by the assessee, these all relate to the order of the CIT(A) in sustaining the addition made by the AO.

4. First we take up ITA No.2385/Del/2019 for A.Y. 2007-08 as the lead case. Facts of the case, in brief, are that the assessee is an individual and engaged in the business of trading of metal. As per the ITD system, the return for the year under consideration was not filed by the assessee. Information was received from ACIT, Central Circle-10, Jhandewalan Extension, New Delhi dated 13th March, 2013 forwarded through the CIT, Central-II, New Delhi and CCIT, Delhi-I, New Delhi, vide their letters dated 19th March, 2013 and 26th March, 2013, respectively, therein providing a CD wherein the list of parties to whom the bogus purchases/accommodation entries provided by Shri Rakesh Gupta and various other persons was appearing. The assessee was also one such beneficiary. Accordingly, the case of the assessee was reopened as per the provisions of section 147 of the Act and notice u/s 148 dated 14th March, 2014 was issued. One copy of the said notice was sent through speed post on 14th March, 2014 and one copy was given to the Inspector and notice server for making personal service of the same. The notice was served through notice server personally on 18th March, 2014. Subsequently, letter dated 5th May, 2014 and 22nd May, 2014 were again sent on this address for non-compliance of statutory notices, but, these were received back unserved. The notice issued u/s 142(1) dated 08.08.2014 and questionnaire dated 08.08.2014 were also returned back unserved with the same postal remark. Since

there was non-compliance from the side of the assessee, the AO, on the basis of the material available with him, made an addition of Rs.19,92,758/- being the purchase of Rs.19,92,758/- made from M/s Vishu Trading Company, treating the same as bogus purchases. Similarly, for A.Y. 2009-10, the AO made addition of Rs.5,89,961/-.

5. Before the CIT(A), the assessee, apart from challenging the addition on merit, challenged the validity of reassessment proceedings. However, the Id.CIT(A) dismissed both the issues.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. I have considered the rival arguments made by both the sides and perused the record.. It is an admitted fact that due to non-appearance before the AO to substantiate that the assessee was not involved in making bogus purchases and in absence of substantiating his case, the AO was constrained to pass the order u/s 147/144 of the Act, determining the total income of the assessee at Rs.19,92,758/- for A.Y. 2007-08 and Rs.10,14,640/- for A.Y. 2011-12 which has been upheld by the Id. CIT(A). It is the submission of the Id. Counsel that the various details furnished before the CIT(A) were not properly considered by her and she has simply sustained the addition made by the AO. On a pointed query by the Bench as to whether the assessee has received the notice issued by the AO or not, the Id.

Counsel for the assessee fairly conceded that the assessee, in fact, has received the notice, but, under the misconception that the notice does not belong to him did not appear before the AO. It is his alternate contention that given an opportunity, the assessee is in a position to substantiate his case that the assessee was not indulged in any bogus purchases, and, therefore, no addition is called for. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the AO with a direction to grant one final opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the AO and produce the relevant details to substantiate his case, failing which the AO is at liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

8. In the result, the appeals filed by the assessee are allowed for statistical purposes.

The decision was pronounced in the open court at the time of hearing itself i.e., on 17.03.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 17th March, 2021.

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi

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