

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI  
BEFORE SRI MAHAVIR SINGH, JM AND SRI N.K. PRADHAN, AM**

**ITA No. 4783/Mum/2015**

(A.Y:2011-12)

<b>Nitin Rajmal Shah</b> C-113, Shyam Kamal, Agarwal Market, Vile Parle (East) Mumbai- 400 057	Vs.	<b>The Dy. Commissioner of Income Tax, Circle-6</b> CGO Annexe Maharshi Karve Road Mumbai-400 020
<b>Appellant</b>	..	<b>Respondent</b>
PAN No.AADPS5476M		

<b>Assessee by</b>	..	Shri A.N. Shah, AR
<b>Revenue by</b>	..	Shri Sumar Kumar, DR
<b>Date of hearing</b>	..	<b>19-09-2017</b>
<b>Date of pronouncement</b>	..	<b>22-09-2017</b>

**ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal by the assessee is arising out of the order of CIT(A)47 Mumbai, in appeal No. CIT(A)-436/AP.23/14-15, dated 29-05-2015. The Assessment was framed by DCIT Circle 6, Mumbai for the A.Y. 2011-12 vide order dated 29-03-2014 under section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) restricting the action of the AO by estimating the profit rate at 12.5% of the bogus purchases.

3. Briefly stated facts are that the assessee is a contractor and undertaking the work from Govt., Semi-Govt. and Quasi-Govt. and



executing any type of work i.e. road construction, road repairs, storm water drainage and petty works etc. A survey u/s 133A of the Act was conducted on the RPS Infra Projects Pvt. Ltd. on 26-11-2012 at C-113, Sham Kamal, Agarwal Market, Ville Parle East, Mumbai from where it is found that from the same premises at least eight entities were operating and issuing bogus bills and these are hawala parties. The AO received information from DGIT (Investigation), who in turn received information from Sales Tax Department, Mumbai that the assessee has made purchases from hawala parties, as listed in hawala dealers by the Maharashtra Sales Tax Department who are providing bogus bills of purchase amounting to Rs. 36,72,560/- as admitted by these hawala dealers in their deposition before the authorities.

4. According to information received the name of this party was appearing in the list of hawala entry operators as supplied by sales Tax Department of Maharashtra. The hawala traders admitting before the sales tax authorities in their deposition that they were providing only accommodation purchase bills on commission basis without being actual purchase/ sale of goods. The AO during the course of scrutiny assessment proceedings required the assessee to file the details of purchase. The assessee filed copies of purchase bills from the above said parties, copies of ledger extract and copies of bank statements to prove the payments by cheque. The AO required the assessee to produce these parties for verification but assessee expressed his inability to do so. According to the AO, the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of profit rate @ 15% of unproved purchase at Rs.5,50,884/- to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restricted the disallowance at 12.5% of the bogus purchases by observing in para 6 as under: -



*“6. I have carefully considered the assessment order, the grounds of appeals and the appellant's written submission dated 28.05.2015. The AO has very elaborately discussed in his assessment order as to why he has made the addition on the basis of information collected on the website of Maharashtra Sales Tax Department on the ground that all the parties are bogus parties. In its written submission the appellant had pleaded that the purchases have been made genuinely and are also consumed. However, no evidence was adduce to prove the above claim during The appellate hearing. It is seen that the AO has actually not made a disallowance of 15% as stated by him in para-9 of his assessment order (relating to Ground of Appeal No.1) but actually of 19% in aggregate considering the aforesaid disallowance of 4% referred to by the AO in para 10 of his assessment order (relating to Ground of Appeal No.2), Thus, in the light of the appellant's own request in its written submission dated 28.05.2015, and also for the sake of natural justice, the disallowance is directed to be restricted to 12.5% of the purchases and not 19% as done by the AO. The AO is directed to restrict the disallowance to 12.5% only. Thus in the light of the discussion above, the appeal is partly allowed.”*

5. We have considered the issue and gone through the facts and circumstances of the case. We find from the facts of the case and argument of both the sides, that the CIT(A) has applied the profit rate at the rate of 12.5%, which according to us, is quite reasonable. We are of the view that a profit rate of 12.5% will meet the end of justice in view of the decision of Hon'ble Gujarat High Court in the case of CIT vs. Smith P.



**Nitin Rajmal Shah**  
**ITA No. 4783/Mum/2015(A.Y:2011-12)**

Seth (2013) 356 ITR 451 (Guj). We confirm the order of CIT(A) and the appeal of assessee is dismissed.

**6. In the result, the appeal of assessee is dismissed.**

Order pronounced in the open court on 22-09-2017.

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Mumbai, Dated: 22-09-2017  
*Sudip Sarkar /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.

//True Copy//  
BY ORDER,  
Assistant Registrar  
**ITAT, MUMBAI**