

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO.7510/MUM/2016 (A.Y: 2011-12)

DCIT, Circle – 13(1)(2), 2nd Floor,
Room No.218,
Aayakar Bhavan, M.K.Road,
Mumbai-400 020

v. M/s Panchavati Valves & Flanges Pvt. Ltd.;
Sumit Samarth Arcade,
B-Wing, 503-A & B, 5th Floor,
Behind Jain Mandir, Aarey Road,
Goregaon (W)
Mumbai – 400062

PAN: AABCP 3333 M

(Appellant)

(Respondent)

Assessee by	: None
Department by	: Ms. Arju Garodia
Date of Hearing	: 17.08.2017
Date of Pronouncement	: 20.09.2017

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 21, Mumbai dated 17.10.2016 for the Assessment Year 2011-12. The only grievance of the Revenue in its appeal is Ld.CIT(A) erred in restricting the addition to ₹.11,58,686/- at

12.5% on the addition made by the Assessing Officer towards non-genuine purchases of ₹.92,69,489/-.

2. Briefly stated the facts are that the assessment was completed u/s.143(3) r.w.s. 147 on 16.03.2015 treating purchases of ₹.92,69,489/- as bogus purchases for the reason that there was information said to have been received from Sales Tax Department stating that the dealers have only supplied bogus purchases bills without delivery of goods. Therefore, the Assessing Officer was of the view that the said purchases from Harshil Ferromet Pvt. Ltd are bogus and assessee was asked to produce the parties for confrontation. The assessee submitted its reply along with copies of bills etc. contending that purchases were made from the said party, books were audited and the party is assessed to tax, sale was recorded from such purchases. Therefore, it was submitted that the purchases are genuine purchases made during the course of business of the assessee. Not convinced with the replies, the Assessing Officer observing that the dealer Harshil Ferromet Pvt. Ltd admitted before the Sales Tax Department that they have indulged into providing bogus bills for purchases and also since notices issued to them u/s. 133(6) were returned unserved, the Assessing Officer concluded that the purchases made by the assessee are bogus purchases and brought to tax.

3. On appeal the Ld.CIT(A) following the decision of the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Sheth [38 taxman.com 385] wherein the Hon'ble High Court held that when the total sale is accepted by the Assessing Officer then entire purchases cannot be added to the income of the assessee. Ld.CIT(A) estimated the profit at 12.5% from out of the said purchases and restricted the addition accordingly.

4. In spite of issue of notices none appeared on behalf of the assessee. Therefore, on hearing the Ld. DR we dispose of this appeal on merits. Ld.DR vehemently supported the orders of the Assessing Officer.

5. On a careful consideration of the order of the Ld.CIT(A), we find that the profit was estimated at 12.5% following the decision of the Hon'ble Gujarat High Court wherein it has been held that when the total sales are accepted then the entire purchases cannot be treated as income of the appellant and only the fair profit ratio should be applied on such purchases. The Ld.CIT(A) while estimating the profit at 12.5% observed as under: -

12. It is an undisputed fact that the assessing officer identified the party based on information received from Investigation Wing. The AO has issued notice u/s 133(6) but was returned unserved. However, as far as the evidence submitted by the appellant is also concerned, the appellant has filed his own books, purchase bills/challans, ledger accounts and has its own bank statement to further his argument. It has also filed copy of bank statement

of the party. The fact that the payments are being made through cheques is not something that is being doubted. In fact, that is the contentious issue; that these parties which are indicated by the Sales Tax Department through a procedure which appears to be technically correct on paper, are in fact engaged in false billing for a fee/commission. The onus of proving the entire transactions to be genuine is definitely on the tax payer, when it is making the claim of purchase and especially in light of the doubt that has been raised by the enquiries conducted by the Sales Tax Department, the onus is even more on the tax payer to show that as far as he is concerned, he has discharged his tax related liabilities in an accurate manner. So therefore, while on one hand the AO may not had a clinching proof but the primary responsibility which is ensued on the tax payer has also not been discharged in terms of establishing the genuineness of the transaction. Merely filing copies of his own ledger accounts and bank accounts does in no way establish that the parties actually existed, but then considering that the books of accounts have not been disputed, purchases have not been proved, as bogus and neither cheques have been shown to be received back as cash by the appellant, I am of the considered view that in the context of the situation the cause of justice would be served by looking at the gross profit margins being declared by the appellant. Recently Hon'ble Gujarat High Court in the case of CIT vs. Bholanath PolyFab Pvt. Ltd. (2013) 355 ITR 290 and thereafter in the case of CIT vs. Simit P. Sheth (2013) 219 Taxman 85 (Guj) has held that in such facts and circumstances, not entire purchase price but only profit element embedded in such purchases can be added. The finding of the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Seth is as under: -

"We are broadly in agreement with the reasoning adopted by the Commissioner (Appeals) with respect to the nature of disputed purchases of steel. It may be that the three suppliers from whom the assessee claimed to have purchased the steel did not own up to such sales. However, the vital question while considering whether the entire amount of purchases should be added back to the income of the assessee or only the profit element embedded therein was to ascertain whether the purchases themselves were completely bogus and non-existent or that the purchases were actually made but not from the parties from whom it was claimed to have been made and

instead may have been purchased from grey market without proper billing or documentation.

In the present case, the Commissioner of Income-tax (Appeals) believed that when as a trader in steel the assessee sold certain quantity of steel, he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence, therefore, the Commissioner (Appeals) believed the assessee's theory that the purchases were not bogus but were made from the parties other than those mentioned in the books of account. That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. So much is clear by the decision of this court. In particular, the court has also taken a similar view in the case of CIT v. Vijay M. Mistry Construction Ltd. [2013] 355 ITR 498 (Guj) and in the case of CTT v. Bholanath Poly Fab (P.) Ltd. 120131355 ITR 290 (Guj). The view taken by the Tribunal in the case of Vijay Proteins Ltd. v. Asstt. CIT [1996] 58 ITD 428 (Ahd.) came to be approved.

If the entire purchases were wholly bogus and there was a finding of fact on record that no purchases were made at all, counsel for the Revenue would be justified in arguing that the entire amount of such bogus purchases should be added back to the income of the assessee. Such were the facts in the case of Pawanraj B. Bokadia (supra).

This being the position, the only question that survives is what should be the fair profit rate out of the bogus purchases which should be added back to the income of the assessee. The Commissioner adopted the ratio of 30 per cent of such total sales. The Tribunal, however, scaled down to 12.5 per cent. We may notice that in the immediately preceding year to the assessment year under consideration the assessee had declared the gross profit at 3.56 per cent of the total turnover. If the yardstick of 30 per cent, as adopted by the Commissioner (Appeals), is accepted the gross profit rate will be much higher. In essence, the Tribunal only estimated the possible profit out of purchases made through non-genuine parties. No question of law in such estimation would arise. The estimation of rate of profit

return must necessarily vary with the nature of business and no uniform yardstick can be adopted."

13. I am guided by the ratio of decision of the Hon'ble Gujarat High Court in the case of CIT VS Simit P. Sheth pronounced on 16.1.2013 in tax appeal No.5531 of 2012 wherein the Hon'ble Court have held that when the total sale is accepted by the AO, then the entire purchases cannot be added to the income of the appellant. The Hon'ble Court have, therefore, held that fair profit ratio would be needed to be added back to the income of the assessee.

14. During the year gross profit of 12.31% and net profit of 3.58% on turnover of Rs. 16.16 crores has been shown. Therefore, in fact and circumstances of the case, in this particular case, it is considered most appropriate to adopt 12.5% profit which can take care of the rotation of capital utilized for such transaction. Hence in the light of finding of the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth, 12.5 % profit is found to be appropriate for ascertainment of taxable income related to such transaction. Thus, accordingly ₹.11,58,686/- (12.50% of 92,69,489/-) is sustained and rest of addition of ₹.81,10,803/- is deleted. The ground of appeal no 2 and 3 are partly allowed.

6. In the circumstances we do not find any good reasons for interfering in the decision of the Ld.CIT(A) in estimating the profit from such purchases. We reject the grounds of Revenue.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 20th September, 2017.

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER
Mumbai / Dated 20/09/2017
VSSGB, SPS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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,

(Asstt. Registrar)
ITAT, Mum