

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "H", MUMBAI**

BEFORE SHRI R.C. SHARMA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 7086/MUM/2016
Assessment Year: 2011-12**

The ITO - 19(1)(2), Room No. 204, Matru Mandir, Mumbai - 400007	Vs.	M/s Bhavana Steel, Sabusidique Building, 1 st Khetwadi Lane, Mumbai - 400004 PAN: AAEFB9418R
(Appellant)		(Respondent)

Revenue by : Shri M.C. Omi Ningshen (DR)
Assessee by : Shri Sashank Dundu (AR)

Date of Hearing: 09/11/2017
Date of Pronouncement: 30/11/2017

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against order dated 20/09/2016 passed by the Ld. Commissioner of Income Tax (Appeals)-30, Mumbai, for the assessment year 2011-12, whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against assessment order passed u/s 143 (3) read with section 147 of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee is a firm engaged in the business of trading in Ferrous and Non-Ferrous Metals, filed its return of income for the assessment year under consideration declaring the total income of Rs. 13,54,170/- which was processed u/s 143(1) of the Act. Subsequently, on the basis of information from Director General Income Tax (Inv.) to the effect that during the financial relevant to the assessment year under consideration, the assessee has taken accommodation entries from four bogus entities to inflate purchases, the assessment was reopened u/s 147 of the Act by issuing

notice u/s 148 of the Act. During the reassessment proceedings, the assessee was asked to furnish the details including books of account bills and vouchers and other documents to verify the genuineness of the transaction. In response thereof the assessee furnished some of the documents including purchase invoices, copies of bank statements, stock register and quantitative tally etc. and submitted that the said documents prove the genuineness of the transaction. However, the AO after taking into consideration the details submitted and the submissions made by the assessee treated the purchases amounting to Rs. 6,27,16,659/- as bogus and made addition of 12.5% of the said amount, taking into consideration the profit element involved in the transaction in question.

3. Aggrieved by the assessment order, the assessee challenged the same before the First Appellate Authority. The Ld. CIT (A) after hearing the assessee held the transaction bogus, however, restricted the addition to 6.5% holding that the assessee has evaded VAT of 4% by making purchases from the sources other than the sources mentioned in the books of account and earned estimated profit margin of 2.5%.

4. Aggrieved by the order of Ld. CIT (Appeals), the revenue has preferred this appeal before the Tribunal on the following effective ground:-

“Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in restricting the addition made on account of bogus purchase @ 12.5% to 6.5%.”

5. Before us, the Ld. Departmental Representative (DR) relying on the assessment order submitted that the Ld. CIT (A) has wrongly restricted the addition to 6.5%. The Ld. DR further submitted that the AO has rightly made addition of 12.5% of the total amount of bogus purchases in accordance with the principles of law laid down by the Hon'ble Gujarat

High Court in *Simit P. Sheth*, 356 ITR 451, (Guj). Since, the impugned order is erroneous; the same is liable to be dismissed.

6. On the other hand, the Ld. counsel for the assessee relying on the order passed by the Ld. CIT (A) submitted that the findings of the Ld. CIT (A) are based on the law laid down by the Hon'ble Gujarat High Court in *Simit P. Sheth (supra)*. The Ld. CIT(A) has rightly restricted the addition to 6.5% of the total amount of bogus purchases determined by the AO. Hence, there is no merit in the appeal of the assessee.

7. We have heard the rival submissions and carefully gone through the material on record including the cases relied upon by the parties. The only grievance of the revenue is that the Ld. CIT (A) has wrongly restricted the addition to 6.5% from 12.5% determined by the AO. The relevant portion of the decision of the Ld. CIT (A) read as under:-

“6.12 I have carefully considered the submissions. In the case of Simit P. Sheth (supra), the reasoning given by the Hon'ble Tribunal which is upheld by the High Court, is that ‘the malpractice of bogus purchase is mainly to save 10% sales tax etc., it has also been informed that in this industry about 2.5% is the profit margin. Therefore, respectfully following the decisions of the co-ordinate bench pronounced on identical circumstances, we hereby direct that the disallowance is required to be sustained at 12.5% of the purchase from those parties’. Request for the appellant is that, considering the VAT of 10% in the state of Gujarat and the profit margin of 2.5% in the line of trade, 12.5% was adopted in that case by the Court, whereas the VAT here is only 4%, therefore adopting the same logic the profit percentage is to be restricted to 6.5%. The appellant furnished the copies of the purchase bills, which were enclosed to the written submissions in the paper book, and on perusal of the same in all the bills the submissions in the paper book, and on perusal of the same in all the bills the percentage of VAT is charged @ 4%. The margin in the trade is around 2.5%, which is also stated in the above decision and the appellant is also in the same line of business. If the same logic is

applied the profit percentage embedded on such percentage is to be restricted to 6.5%, as pleaded by the AR. Apart from that in the present case, the average GP already admitted is worked out to 2.86%, as per the workings given by the appellant's AR. The appellant also put an argument in the submissions that there is no motive to save sales tax and the tax evaded, if any has been so done by the seller parties i.e. the parties from which Appellant has purchased the impugned goods and requested that addition may be upheld only to the extent of Appellant's profit margin embedded in purchases. This argument is not at all acceptable because, first of all the appellant failed to prove that the taxes are paid on the purchases and for this specific reason that is taxes are not paid the sales tax department kept the names of defaulters in their website. Further, the appellant failed to prove that the goods are purchased from the said parties and in view of the same it is presumed that the goods are purchased from grey market. Once goods are purchased in the grey market, question of payment of taxes does not arise. In view of the same the benefit cannot be given to the appellant on the taxes front. Taking all the facts into consideration and the reasoning given by the AR's pleading for adopting a lower percentage in their case, which is convincing and also based on the same logic adopted by the case law cited for estimating the profit element embedded on non-genuine purchases, the AO is directed to restrict the estimation of the profit @ 6.5% on the total non genuine purchases of Rs. 1,42,22,969/- made from M/s SwastikImpex. Appeal on these grounds is treated as 'Partly Allowed'. "

8. We notice that the findings of the Ld. CIT (A) is based on the law laid down by the Hon'ble Gujarat High Court in *Simit P. Sheth (supra)*, wherein the Hon'ble Gujarat High Court has upheld the addition of 12.5% sustained by the ITAT. In the present case, the Ld. CIT(A) has restricted the addition to 6.5% keeping in view the VAT payable during the relevant period. Hence, we do not find any infirmity in the order passed by the Ld. CIT(A) to interfere with the same. We, therefore, uphold the findings of the Ld. CIT (A) and dismiss the sole ground of the appeal of the revenue.

In the result, appeal filed by the revenue for assessment year 2011-2012 is dismissed.

Order pronounced in the open court on 30th November, 2017.

Sd/-

(R.C. SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 30/11/2017

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai