

**IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM**

ITA No. 1454/Mum/2017

(A.Y. 2009-10)

Zakir Hussain Vasi Flat No. E/7, 3 rd Floor, Navjeevan Society, Near Shalimar Hotel, New Mill Road, Kurla East, Mumbai-400 072	Vs.	The Income Tax Officer 26(3)(5), Mumbai
Appellant	..	Respondent
PAN No. AOVPS0523H		

Assessee by : Jayant R. Bhatt, AR

Revenue by : Aarju Garodia, DR

Date of hearing: 20-12-2017 **Date of pronouncement :** 29-12-2017

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-38, Mumbai, [in short CIT(A)] in appeal No. CIT(A)-38/IT.112/ITO-26(3)(5)/2015-16 dated 25.11.2016. The Assessment was framed by the Income Tax Office, Circle 26(3)(5), Mumbai (in short ITO) for the assessment year 2009-10 vide order dated nil under section 147 read with 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) confirming the addition made by AO being estimate profit at the



rate of 12.5% of the bogus purchases. For this assessee has raised following ground No. 1: -

“1. Under the facts and circumstances of the case and in law, the learned CIT(A) has erred in confirming the addition made by AO amounting to ₹ 1,31,66,821/- i.e. estimating profits @ 12.5% of ₹ 10,53,34,568/- treating the entire amount as Bogus Purchases.”

3. Briefly stated facts are that the assessee is dealer in all types of MS pipes and tubes. 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 billers, as listed in hawala dealers by the Maharashtra Sales Tax Department who are providing bogus bills of purchase without supply of goods and assessee also disclosed purchases amounting to Rs. 10,53,34,568/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

Sr. No.	Name of the Bill Provider	VAT/ Tin No.	Amount
1	Om Corporation	27310540795V	Rs.15,243,642/-
2	Nageshwar Enterprises	27030540755V	Rs.24,75,567/-
3	Nikhil Enterprises	27450374751V	Rs.43,76,340/-
4	Jigan Enterprises	27560404324V	Rs.25,26,056/-
5	Atlanta Corporation	27920227780V	Rs.1,71,61,025/-
6	Naman Enterprises	27450524228V	Rs.2,42,806/-
7	Century Enterprises	27280617878V	Rs.6,63,967/-
8	Shree Ganesh Steel trading	27470246118V	Rs.8,51,153/-
9	Sinah Industries	27750403201V	Rs.1,02,08,091/-
10	Trishla Steel Industries	27120225601V	Rs.2,46,57,386/-
11	Amul Steel Industries	27060227186V	Rs.2,69,28,535/-
		TOTAL	Rs.10,53,34,568/-



4. According to information received, the names of these parties were 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 asked the assessee to file the alleged information of aforementioned parties. However, the assessee filed copies of purchase bills from the above said parties, copies of ledger extract, purchase bills/invoices and copies of account statement and copy of the sale bills. The assessee failed to produce challans, Lorry receipts, Octoroi payment receipts, confirmation from Transport operator etc. to substantiate his claim of purchases for the aforesaid parties. According to the AO, the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of profit rate @ 12.5% of unproved purchase at Rs.1,31,66,821/- to the returned income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who sustained the disallowance at 12.5% of the bogus purchases by observing in para 4.2.12 to 4.2.16 and by following the decision of Hon'ble Gujarat High court in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj) by observing as under: -

“4.2.12 Thus in view of the above facts and circumstances of the case and the recent judgments quoted as above, it is observed that the likelihood of the purchase price being inflated cannot be ruled out and therefore in view of the above, the AO has not treated the entire purchases from the aforesaid parties to be bogus but held to have been made from the parties other than those mentioned in the books of accounts and that being the position, not the entire purchase price but only the profit element



embedded in such purchases has been taxed by the AO @ 12.5%.

4.2.13 Therefore the possible profit out of purchases made through non-genuine party has been estimated by the AO which is commensurate with the judgment in the case of CIT vs. SIMIT P SHAH (2013) 356 ITR 451 of Hon'ble Gujrat High Court wherein disallowance on account of bogus purchases in the case of traders was sustained at 12.5% of the alleged bogus purchases.

4.2.14 The appellant contended that the addition cannot be made as there are territorial Income Tax Tribunal Judgements which are binding on the appellant authorities and has requested to delete the addition made by the AO at the rate of 12.5% of alleged Bogus purchases.

4.2.15 The contention of the appellant has been considered & not found to be acceptable in view of the fact that in case of Bogus purchases it is vital to ascertain whether purchases were totally non-existent or were actually made but from gr; market without proper billing instead of from parties from whom it was claimed to be purchased. Once it is clear that purchases were actually made then only the profit embedded in it and not price of bogus purchases could be added in the income of the assessee held in the case of Simit P Sheth (supra) of Gujarat High Court. The facts of the cases relied upon are distinguishable on facts & therefore cannot be relied upon completely. In fact the appellant has



himself submitted that alternatively addition should be marginally sustained as OP addition.

4.2.16 In view of the facts and circumstances of the case and discussion above, the contention and submission of the assessee are not found to be accepted and are therefore rejected and the GP rate of 12.5% applied by the AO is sustained and accordingly the addition of Rs. 1,31,66,821 made by the AO is upheld.”

5. We have heard the rival contentions, we find that admittedly these are bogus purchases and assessee has obtained bogus bills but made purchases from grey market. The assessee is dealer in all types of MS pipes and tubes. Admittedly, the assessee has produced complete bogus bills payment receipts by cheque but could not produce lorry receipts, octroi payments etc. But the assessee also produced the complete stock tally and in such circumstances, we are of the view that the only alternative left is application of profit rate. As argued by the learned Counsel for the assessee, profit ratio earned by assessee in the trade of Iron and Steel is much lower and he produced GP chart for last 6 years, and he also produced the turnover vis-à-vis GP which is as under: -

Assessment Years	Gross Profit	Sales	GP%
2007-08	1488742	38193182	3.90
2008-09	3600320	67143194	5.36
2009-10	3847576	174160063	2.21
2010-11	3611592	90809444	3.98
2011-12	4202081	105696448	3.98
2012-13	2852769	85285128	3.79

Turnover in AY 2009-10	174160063
Average GP%	3.79
Gross Profit on Avg GP	6608503.17
Difference	2760927.17



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6. In view of these, the learned Counsel only requested that the profit rate is in the range of 4.5% and assessee has already disclosed the profit rate of 2.21%. In these circumstances, we are of the view that the assessee might have saved on account of VAT at the rate of 5% and some lower margins of profit from the purchases made from grey market. Accordingly, we estimate the profit rate at 6% being peculiar nature of trade instead of 12.5% applied by the AO and confirmed by CIT(A). Accordingly, we direct the AO to apply the profit rate of 6% and the appeal of the assessee is partly allowed.

7. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 29-12-2017.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 29-12-2017

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