

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

**BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 1257/MUM/2016  
Assessment Year: 2009-10**

The ITO - 19(1)(4), Room No. 222, Matru Mandir, Mumbai - 400007	<b>Vs.</b>	Shri Dinesh Kumar M. Sanghavi, 64, Harharwala Bldg., SVP Road, Alankar Cinema, Mumbai - 400007  PAN: AFXPS8582F
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri Ram Tiwari (Sr. DR)  
Assessee by : None

Date of Hearing: 11/01/2018  
Date of Pronouncement: 17/01/2018

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the revenue against order dated 18.12.2015 passed by the Ld. Commissioner of Income Tax (Appeals)-30, Mumbai, for the assessment year 2009-10, 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 engaged in the business of dealing in Iron and Steel, filed its return of income for the assessment year under consideration declaring the total income of Rs.11,33,062/- .Subsequently, on the basis of information received by DGIT (Inv.) from the Sales Tax Department regarding bogus purchases made by various companies including the present assessee from hawala entities which used to issue bogus bills without selling any goods, the assessment was re-opened u/s 147 of the Act. As per the information, assessee Dinesh Kumar M. Sanghvi, Proprietor

M/s Max Steels had obtained bogus bills from Aniket Industries to the tune of Rs. 17,52,972/- during the financial year relevant to the assessment year under consideration.

3. During the assessment proceedings, AO issued notices to the assessee u/s 142 (1) calling details of the transaction made by the assessee during the relevant year. Notice u/s 133 (6) were also sent, which were returned un-served by the Postal Authorities. During the assessment proceedings, it came to the notice of the AO that the assessee had also obtained bogus bills from Gravity Metal and Alloys Pvt. Ltd. to the tune of Rs. 80,83,270/- without making any actual purchase. The assessee failed to establish the movement of goods by providing transport bills and the receipt of goods from the points of purchase to the place where it was received the assessee also failed to produce stock register and the records relating to receipt and dispatch of goods. On the basis of the evidence on record in the light of the contention of the party, the AO determined the total income of the assessee at Rs. 1,09,69,300/- after making addition of the amount of purchases shown made from the aforesaid two parties amounting to Rs. 98,36,242/-.

4. Aggrieved by the assessment order, the assessee challenged the order by filing first appeal before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee restricted the addition to 17.5% of the total bogus purchases made by the assessee. The assessee as well as the revenue challenged the impugned order passed by the Ld. CIT (A). The contention of assessee was that the Ld. CIT (A) has wrongly sustained the addition to 17.5% of the total amount of bogus purchases and the contention of the revenue was that the Ld. CIT(A) has wrongly restricted the addition to 17.5% as against the 100% made by the AO. The coordinate Bench vide order dated 22.11.2017 decided the appeal of the revenue and restricted the addition to 12.5% of the total bogus purchases. The

present appeal has been filed by the revenue against the same order passed by the CIT (A), whereby the CIT (A) has restricted the addition to 17.5%.

5. 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 in the circumstances of the case and in law, the Ld. CIT (A) was justified in confirming addition @ 17.5% of total purchases held as bogus by the AO?”*

6. This case was fixed for hearing on 11.01.2018. When the case was called for hearing none appeared on behalf of the assessee nor any application for adjournment was received. Since, the assessee’s appeal against the same order has been decided by the Bench, we decided to proceed with the case and disposed of this appeal on the basis of material on record after hearing the Departmental Representative (DR).

7. Before us, the Ld. DR submitted that against the impugned order assessee had also filed appeal before the Tribunal and the Tribunal has decided the assessee’s appeal in ITA No. 2982/Mum/2016 and the Tribunal has restricted the addition to 12.5%.

8. We have perused the material on record, the coordinate Bench has decided the assessee’s appeal against the impugned order passed by the Ld. CIT (A) and has restricted the addition to 12.5% holding as under:-

*“7. Having said so, let us examine in the case of bogus purchases, whether, addition can be made towards total purchases made from these parties or only profit element embedded in such purchases. Various High Courts have taken a consistent view that in the case of bogus purchases, only profit element embedded in such purchases needs to be taxed. The Hon’ble Gujarat High Court in the case of Vijay Protein Ltd vs. CIT Income Tax Reference No. 139 of 1996 order dated 21-07-2014 held that only profit element embedded in bogus purchases have to taxed. In the case of CIT vs*

*Simit P Sheth (supra), the Hon'ble Gujarat High Court held that no uniform yardstick could be applied to the rate of profit and its varies with the nature of business. The co-ordinate bench of ITAT, Mumbai in several cases have taken a consistent view that in the case of bogus purchases, net profit of 12.5% to 15% needs to be taxed. Therefore, consistent with the view taken by the co-ordinate bench, we are of the view that only profit embedded in bogus purchases needs to be taxed. IN this case, CIT (A) has estimated net profit of 12.5% on bogus purchases. The assessee claims that net profit determined by the CIT (A) is on higher side when compared to the nature of business. The assessee further claims that he is having average gross profit of 5% to 6% which is in accordance with the industry average. We find that the assessee is in the business of trading in iron and steel. In the case of iron & steel traders, the industry average net profit ranges from 5% to 10%. Therefore, keeping in view the overall facts and circumstances of the case and also consistent with the view taken by the co-ordinate benches in number of cases, we deem it appropriate to estimate net profit of 12.5% subject to further deduction towards net profit already disclosed by the assessee for the relevant financial year. Hence, we direct the AO to estimate net profit of 12.5% on alleged bogus purchases and also allow credit towards gross profit already declared by the assessee”*

9. Since, the coordinate Bench has restricted the addition to 12.5% in view of the law laid down by the various High Court and the Tribunal discussed above, we respectfully following the decision of the coordinate Bench sustain the addition of 12.5% of the total amount of bogus purchases made by the assessee during the year relevant to the assessment year under consideration.

In the result, appeal filed by the revenue for assessment year 2009-2010 is dismissed.

Order pronounced in the open court on 17<sup>th</sup> January, 2018.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 17/01/2018

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

**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**