

आयकर अपीलिय अधिकरण “SMC” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI  
BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 391/Mum/2018

(निर्धारण बर्ष / Assessment Year 2010-11)

Jitendra Shivjibhai Patel 201/202, Jolly Apartment, Kiroi Road, Ghatkopar West, Mumbai-400 086	Vs.	The Income Tax Officer Ward 27(1)(5), 4 <sup>th</sup> Floor, Tower No. 6, Railway Station, Commercial Complex, Vashi Navi Mumbai-400 703
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No. AAAPP5525F		

Assessee by : Ruchi M Rathod, AR

Revenue by : P.R. Chauhan, DR

Date of hearing: 09-05-2018 Date of pronouncement : 09-05-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-25, Mumbai [in short CIT(A)], in appeal No. CIT(A)-25/IT-858/2015-16 dated 20.11.2017. The Assessment was framed by the Income Tax Officer, Ward 27(1)(5), Mumbai (in short 'ITO) for the A.Y. 2010-11 vide order dated 25.01.2016 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) estimating 12.5% as profit on bogus purchases. For this assessee has raised the following grounds: -

*“1. Learned CIT(Appeal) erred in adding profit @ 12.5% on the purchases effected from registered dealers and erred in treating the same as bogus purchase ignoring the detailed evidences brought on record & further erred in levying interest thereon and ignoring the judicial precedents brought to his knowledge.*

*2. Learned CIT(Appeal) erred in adding the purchases profit @ 12.5% on the purchases on the basis of information received from Sales Tax Authorities which contrary to the material fact on record and more particularly disallowance is contrary to the provisions of Section 69C since the source is in dispute and not the purchase expenditure.”*

2. I have heard the rival contentions and gone through the facts and circumstances of the case. Briefly stated facts are that the assessee engaged in the business of trading in timber and plywood. 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. 1,07,96,421/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -



“SI No.	Name of party	Amount
1.	<i>Polaris Sales Agency Pvt. Ltd</i>	8,62,484/-
2.	<i>Shivraj Traders</i>	14,82,202/-
3.	<i>Real Traders</i>	11,50,216/-
4.	<i>Rumggst Enterprises</i>	7,64,727/-
5.	<i>KK Enterprises</i>	25,80,726/-
6.	<i>Swastik Enterprises</i>	39,56,076/-
7.	<i>Spice Trading co.</i>	17,08,139/-
8.	<i>Ashar Impex</i>	6,74,681/-
9.	<i>Swastik Enterprises</i>	11,09,775/-
	<i>Total</i>	1,07,96,421/-

3. 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 @ 25% of unproved purchase at Rs.26,99,108/- to the returned income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who estimate the disallowance at 12.5% of the bogus purchases by observing in para 5.3.5 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: -

*“5.4.5 In View of the facts and circumstances of the case and the judicial pronouncements cited above, what can be disallowed or taxed in the instant case, is the excess profit element embedded in such purchases shown to have been made from aforesaid parties. As narrated earlier, the AO in this case has held that the parties from whom the purchases were made by the appellant were found to be bogus, estimations ranging from 12.5% to 25% have been upheld by the Hon'ble Gujarat High Court, depending upon the facts of the case. In a number/series of recent cases involving similar set of facts as in the instant case, the Hon'ble Mumbai Tribunal has estimated the G.P. addition on account of such bogus purchases as 12.5%, some of which are listed below:*

*i) Smt. Kiran Navin Doshi in ITA No. 2601/Mum/2016 dated 18.01.2017.*

*ii) Ashwin Purshotam Bajaj & Anr. Vs ITO & Anr. ,in ITA No.4736/Mum/2014, 5207/Mum/2014,dated:14-12-2016.*

*iii) ITO &Anr. Vs. Manish Kanji Patel & Anr., in ITA No. 7299/Mum/2014, 7154/Muni/2012 & 7300/Mum/2014, 7627/Mum/2014, dated: 18-05-2017.*

*iv) Ratnagiri Stainless Pvt. Ltd. Vs. ITO, in ITA No.4463/Mum/2016, dated: 04-04-2017.*



- v) *Metropolitan Eximchem Ltd., ITA No. 2935/Mum/2015, dated:29-03-2017.;*
- vi) *Ronak Metal Industries vs. ITO, ITA No. 722/Mum/2017 dtd. 04.09.2017;*
- vii) *ITO vs. Jugraj R. Jain, ITA No. 2571/Mum/2016 & 2572/M/2016 dtd. 02.08.2017;*
- viii) *B.J Exports vs. Asstt. Commissioner of Income tax, ITA No. 5442-5444/Mum/2016 dated 13.09.2017,*
- ix) *Batliboi Environmental Engineering Ltd. vs. Deputy Commissioner of Income-tax, ITA No. 2840 & 3482/M12015 dated 15.03.2017,*
- x) *Deputy Commissioner of Income-tax & Anr. Vs. Remi Process Plant & Machinery Ltd. & Anr., [ITA No. 1723/M/2015, 1817/14/2015 dated 21.03.2017.*

*In view of the above discussed factual matrix and precedents, I am of the view that estimation of 12.5% as against 25% made by the AO, as profit embedded in impugned purchases shown from the alleged hawala parties and adding the same to the total income returned, would meet the ends of justice. Therefore, I direct the AO to estimate the profit @ 12.5% of the alleged bogus purchases, which works out to rs. 13,49,553/- (@12.5% of Rs.1,07,96,421/-) and restrict the addition to ₹ 13,49,553/- instead of 25% as estimated by the Assessing Officer. The appellant gets a relief for the balance amount of ₹ 13,49,554/-.*



*In the result, the appeal of the appellant is partly allowed.”*

3. I have considered the issue and gone through the facts and circumstances of the case. I 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 me is on higher side going by the nature of business of the assessee i.e. timber and Plywood in which the profit rate is low. I am in full agreement with the argument of the learned Counsel for the assessee and according to me a profit rate of 8% 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. Seth (2013) 356 ITR 451 (Guj) as the assessee has also paid the VAT element on these bogus purchases. On this account, a further deduction in estimation of profit to the extent of 4.5% can be allowed. Hence, I direct the AO to recompute the income after applying profit rate at the rate of 8% and computer the income accordingly. The appeal of the assessee is partly allowed.

4. **In the result, the appeal Assessee is partly allowed.**

Order pronounced in the open court on 09-05-2018.

आदेश की घोषणा खुले मे दिनांक 09-05-2018 को की गई ।

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Mumbai, Dated: 09-05-2018  
*Sudip Sarkar /Sr.PS*



**ITA No. 391/Mum/2018**

**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**