

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. 644/Mum/2018

(निर्धारण बर्ष / Assessment Year 2009-10)

Shri Mubarak Hussain Shaikh C/o Prop of Saba Engineering Works, Saba Engineering Works, B-23, Abdul Rashid Compound, Khairani Road, Sakinaka, Mumbai-400 072	Vs.	The Income Tax Officer, Ward-26(3)(4), Pratyakshakar Bhavan, Mumbai-400 051
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No. AWGPS3438J		

Assessee by : Awadhesh Kumar, AR

Revenue by : V Vidhyadhar, DR

Date of hearing: 07-05-2018 Date of pronouncement : 07-05-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-38, Mumbai [in short CIT(A)], in appeal No. CIT(A)-38/ITO-26(3)(4)/IT.106/2015-16 dated 30.06.2017. The Assessment was framed by the Income Tax Officer, Ward 26(3)(4), Mumbai (in short 'ITO') for the A.Y. 2009-10 vide order dated 11.03.2014 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. At the outset, the learned Counsel for the assessee stated that he has instructions from the assessee not to press this issue of reopening. Accordingly, the issue of reopening is dismissed as withdrawn.

3. The issue on merits is as regards to the order of CIT(A) confirming the action of the AO in adding 25% of bogus purchases as profit of the business.

4. Briefly stated facts are that the assessee is engaged in the business of processing of Iron washers of various types. 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. 59,89,565/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

Sl No.	Name of party	Amount
1.	Ajinkya Multi Trade Pvt. Ltd	120001
2.	Siddhivinayak Steel	178853
3.	Tara Enterprises	1440965
4.	Universal Enterprises	967565
5.	Surat Tube Corporation	130130
6.	Shriti Enterprises	1391258
7.	Revati Steel Traders	183092
8.	Deepak Steel & Tube Traders	335501
9.	Laxmi Trading Co.	342200
	Total	5989565

5. On verification of purchases, the AO require the assessee to produce parties and in the absence of the same, the AO issued notices under section 133(6) of the Act to the above parties. But the said notices were returned with the remark that 'left' or 'not known'. As the assessee



could not produce the evidence regarding transportation of goods or movement of goods, the AO was of the view that these are bogus purchase for inflation of purchase by obtaining accommodation entries. Accordingly, he disallowed 25% of bogus purchases as profit and added to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who confirmed the action of the AO by observing in Para 3.3.15 as under: -

“3.3.15 In the instant case, the AO has only added the profit element embedded in the aforesaid bogus purchases @ 25% which seems to be justified in view of the nature of the business of the appellant. In view of the facts and circumstances of the case and discussion herein above, the contentions and submission of the assessee are not found to be acceptable and are therefore rejected and the addition by the AO ₹ 19,44,520/- is found to be justifiable and accordingly upheld.”

Aggrieved, now assessee is in second appeal before Tribunal.

6. I have heard the rival contentions and gone through the facts and circumstances of the case. I find that the assessee is engaged in the business of procession of Iron washers of various types. It is a fact that the assessee is unable to establish the transportation of goods purchased by it. Even the parties from whom the assessee is obtained accommodation entries are not examined as they were not available at the given address. It means that the assessee has only obtained accommodation bills without actual purchasing the goods. The assessee had purchased the material from grey market avoiding all the payment of Vat and also at lower rate. It means that the assessee has earned a higher profit on these bogus purchases. Accordingly, I am of the view that



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the assessee might have made profit at the rate of 10%. In similar circumstances, Hon'ble Gujarat High Court in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj) restricted the disallowance at 12.5% of the bogus purchases by estimating the profit rate at 12.5%. I am of the view that assessee is engaged in the business of procession of Iron washers, which give little profit. Accordingly, I estimate the profit rate at the rate of 10% and direct the AO to compute the income after applying the profit rate at the rate of 10%. Appeal of the assessee is partly allowed.

7. In the result, the appeal Assessee is partly allowed.

Order pronounced in the open court on 07-05-2018.

आदेश की घोषणा खुले में दिनांक 07-05-2018 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 07-05-2018
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