

IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH MUMBAI  
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER  
ITA No.866/Mum/2018 (Assessment Year 2009-10)

M/s Right Impex 26/24, 6B1, Sindhi Lane, Girgaum, Mumbai-400004. <b>PAN: AAKFR5767M</b>	Vs.	ITO 19(3)(1) 2 <sup>nd</sup> Floor, Matru Mandir, Tardeo Road, Mumbai- 400007.
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Appellant

Respondent

Appellant by : None  
Respondent by : Shri S.K. Bepair (Sr. DR)  
Date of Hearing : 09.08.2018  
Date of Pronouncement : 09.08.2018

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee under section 253 of the Act are directed against the order of Id. Commissioner of Income-tax (Appeals)-51, Mumbai [Id. CIT(A)] dated 17.12.2017 for Assessment Year 2010-11. Though the assessee has raised as many as four grounds of appeal including of various sub-ground in ground no. 2, however, as per our considered view, there is only two substantial ground of appeal for our consideration. Rests of the ground of appeal are either consequential or premature. The following are the substantial ground of appeal:

1. Validity of reopening of the assessment under section 147 of the Act.  
2. Disallowance/addition of bogus purchase @ 10% of the alleged bogus purchases.
2. Brief facts of the case are that the assessee is in the business of Ferrous and Non-ferrous metals, Iron & Steel, filed its return of income for Assessment

Year 2010-11 on 06.09.2010 declaring total income of Rs. 7,3,130/-. The assessment for the year under consideration was processed under section 143(1) of the Act. Subsequently, on the basis of information received from DGIT (Investigation). The assessment was re-opened. The Assessing Officer received the information that the assessee is one of the beneficiaries, who has availed bogus entry from hawala trader. On the basis of information from Sales Tax Department the assessment was re-opened. During the re-assessment proceedings the Assessing Officer noted that the assessee has shown purchases of Rs. 47,00,245/- from 4 such hawala dealers. The re-assessment was completed on 11.01.2016 The Assessing Officer while passing the assessment order made the addition of 12% of total non-genuine purchases as profit element embedded in such tainted purchases. On appeal before the Id. CIT(A), the re-opening was sustained, however, the disallowance on account of bogus purchases was restricted to 10%. Therefore, further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.

3. None appeared on behalf of assessee despite waiting. We have noted that this appeal was listed on 08.08.2018 and was adjourned for today at the request of Id. AR of the assessee. Today neither the Representative of the assessee appeared nor filed any application for adjournment. Therefore, we left no option except to hear the Id. DR to decide the case on the basis of material available on record.

4. Ground No.1 relates to the validity of re-opening. The ld. DR of the Revenue submits that assessment was re-opened on the basis of specific information from the Sales Tax Department that assessee is one of the beneficiary who has availed the bogus entry. Thus, the income of the assessee with regard to the bogus entry of purchases were escaped assessment, therefore, the Assessing Officer has sufficient reason to make his belief for reopening.
5. We have considered the submission of ld. DR for the Revenue and perused the record. We are in agreement with the contention of ld. DR for the Revenue that reopening was made by Assessing Officer on the basis of specific information that the income of assessee has escaped assessment as the assessee has availed accommodation entries from the hawala dealers. Hence, we do not find any merit in the ground no.1 of the appeal, which we dismiss.
6. Ground No.2 relates to upholding the addition of @ 10% of the alleged bogus purchases. The DR submits that the Sales Tax Department, Govt. of Maharashtra and the Investigation Wing of Income tax Department made full-fledged enquiry with regard to hawala dealers who were indulging in providing accommodation enteritis without delivery of goods. The assessee has shown purchases from such parties whose names appeared in the list of hawala dealers. The assessee merely obtained accommodation bills only to inflate expenses and bring out the profitability in order to avoid tax. The ld.

DR further submits that AO has already given sufficient relief to the assessee.

7. We have considered the submission of Id. DR for the Revenue and have gone through the orders of authorities below. We have noted that assessee has shown the total purchases the steel items worth of Rs. 47,00,245/- from 4 parties. The names of all parties were shown in the list of bogus hawala dealers. During the re-assessment, the Assessing Officer asked the assessee to substantiate the genuineness of purchases and corresponding sales of the goods/material. The assessee filed his written submission, the assessee furnished details of purchases along with payment receipt. The reply of the assessee was not accepted by Assessing Officer after considering the submission of the assessee and disallowed the 12.5% of the purchases. We have noted that Assessing Officer has not given any finding over the documentary evidence furnished by the assessee in respect of purchases and corresponding sales. The Assessing Officer has not discussed anything about the contention as well as evidences furnished by assessee.
8. The Id. CIT(A) sustained the addition/disallowance of non-genuine purchases @ 10% on his observation that assessee has reconciled the alleged hawala purchases with corresponding sales and the applicable VAT/Sales Tax Rate on the items are 4% in Maharashtra. We have noted that the Id. CIT(A) have given sufficient relief to the assessee. Therefore, we do not find any merit in the grounds of appeal raised by assessee. Neither the assessee

has come forward to explain the fact for taking contrary view. Hence, the ground no.2 of the appeal raised by assessee is also dismissed.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 09.08.2018.

**Sd/-**  
**G.S. PANNU**  
**ACCOUNTANT MEMBER**

Mumbai, Date: 09.08.2018

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**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT(A)
5. DR "SMC" Bench, ITAT, Mumbai
6. Guard File

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

**BY ORDER,**  
**Dy./Asst. Registrar**  
**ITAT, Mumbai**