



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

**BEFORE SHRI R.C.SHARMA, AM &  
SHRI SANDEEP GOSAIN, JM**

**ITA No.2583/Mum/2017  
(Assessment Year :2009-10)**

Shri Ratnaram K. Choudharay (Proprietor of M/s. Nutech Metal), Office No.14, 1 <sup>st</sup> Floor, Building No.8, Haji Kasma Chawl, Durgadevi Street, Mumbai – 400 004	Vs.	ITO 19(3)(1) Matrumandir, IT Office, Tardeo Road, Grant Road (W), Mumbai – 400 007
<b>PAN: AEAPC6124R</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	None
Revenue by	Shri Chaitanya Anjaria
<b>Date of Hearing</b>	<b>08/08/2018</b>
<b>Date of Pronouncement</b>	<b>31/08/2018</b>

**आदेश / ORDER**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the assessee against the order of CIT(A)-30, Mumbai dated 17/02/2017 for A.Y.2009-10 in the matter of the order passed u/s.143(3) of the IT Act. The assessee has raised the following grounds of appeal:

- 1) The Learned Commissioner of Income tax (Appeals) - 30, Mumbai on the facts and in the circumstances of the case and in Law erred in confirming the action of the Assessing Officer of reopening the assessment u/s. 147 of the Act and issuing notice u/s. 148 of the Act.
- 2) The Learned Commissioner of Income tax (Appeals) - 30, Mumbai on the facts and in the circumstances of the case and in Law erred in restricting estimated additions @ 6.5% of total alleged non-genuine

purchase of Rs. 3,61,50,427/- in spite of the fact that the appellant has established that the total purchases made of Rs. 3,61,50,427/- were genuine purchases.

3) The appellant prays to leave, add, amend or alter the above grounds of appeal on or before the final date of hearing.

2. Rival contentions have been heard and record perused.
3. From the record we found that action of CIT(A) in restricting the addition to the extent of 6.5% have been confirmed by the Tribunal in assessee's own case for the very same assessment year in the appeal filed by the Revenue in ITA No.3441/Mum/2017 dated 25/10/2017. Precise observation of the Tribunal was as under:-

*“We have heard the Ld. D.R., perused the orders of the lower authorities and the material available on record. We have given a thoughtful consideration to the facts of the case and are of the considered view that in the backdrop of the fact that the notices issued by the A.O to the aforementioned 13 parties were returned by the postal authorities with the remarks 'not known', 'left', etc., the very existence of the said parties came under serious doubts. We further find that it remains as a matter of fact that the assessee even otherwise had failed to substantiate the genuineness and veracity of the aforementioned purchase transactions on the basis of irrefutable documentary evidences, viz. delivery challans, transportation receipts, octroi receipts, receipt of weigh bridge for weighing of goods, excise gate pass, goods inward register maintained at godown/warehouse/storage house etc., therefore, the A.O being of the considered view that the genuineness of the purchase transactions could not be verified, had thus rightly rejected the books of account of the assessee by invoking the provisions of Sec. 145(3) of the 'Act'. We find that after rejection of the books of account the CIT(A) had fairly restricted the addition in the hands of the assessee @ 6.5% of the total purchases aggregating to Rs. 3,61,50,427/- which were claimed by the assessee to have been made from the aforementioned 13 parties. We are of the considered view that the adoption of the rate of 6.5% by the CIT(A) is well supported on the basis of the reasoning adopted by the **Hon'ble High Court of Gujarat** in the case of **CIT Vs. Simit P. Sheth (2013) 38 Taxmann.com 385 (Guj)**. We are of the considered view that the CIT(A) on the basis of his aforesaid reasoning for restricting the disallowance/addition to 6.5%*

*of the total non-genuine purchases, had also taken due cognizance of the fact that in the case of the assessee for the immediate succeeding years, viz. A.Y. 2010-11 and A.Y. 2011-12 the addition was restricted by the first appellate authority to 6%. We are of the considered view that the CIT(A) in the present case had on the basis of a very well reasoned order restricted the addition in the hands of the assessee to 6.5% of the total purchases aggregating to Rs. 3,61,50,427/- which were claimed by the assessee to have been made from the aforementioned 13 parties, We are persuaded to be in agreement with the view taken by the CIT(A), and finding no reason to dislodge the view taken by him, therefore, uphold his order.*

*9. The appeal of the revenue is dismissed.”*

4. As the order of CIT(A) has already been confirmed by the Tribunal in assessee's own case, in the appeal filed by the Revenue, we do not find any merit in the appeal filed by the assessee in reducing the addition below 6.5%.

**5. In the result, appeal of the assessee is dismissed.**

Order pronounced in the open court on this 31/08/2018

**Sd/-**  
**(SANDEEP GOSAIN)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 31/08/2018

SK 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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
ITAT, Mumbai