

IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 1130/Mum/2018 (Assessment Year 2011-12)

Shri Ravi Padmaram Choudhary 9/11, 2 <sup>nd</sup> Floor, 2 <sup>nd</sup> Carpenter Street, Near Goal Dewool, Mumbai-400004. <b>PAN: ADSPC4371R</b>	Vs.	ITO - 19(3)(1) Matru Mandir, Tardeo Road, Mumbai-40007.
---	-----	---

Appellant

Respondent

Appellant by : None

Respondent by : Shri S.K. Bepari (DR)

Date of Hearing : 03.10.2018

Date of Pronouncement : 03.10.2018

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

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee under Section 253 of Income-tax Act is directed against the order of Id. CIT(A)-53, Mumbai dated 22.12.2017 for Assessment Year 2011-12. The assessee has raised the following grounds of appeal:

1. The Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as “Ld. CIT(A)”] has erred in upholding the order of the Ld. Assessing Officer and disallowing the purchase to the extent of 12.5% of Rs. 42,72,178 amounting to Rs. 5,34,022/- on account of purchase from non genuine purchase parties.

2. Brief facts of the case are that the assessee is a proprietor of M/s Dynamic Steel (India), dealing with ferrous & Non-ferrous metals. The assessee filed return of income for Assessment Year 2011-12 on 28.09.2011

declaring income of Rs. 7,67,971/-. The return of income was processed and accepted under section 143(1) of the Act. The assessment was re-opened under section 147 on 13.11.2014. The assessment was re-opened on the basis of information received from Sale Tax Department, Government of Maharashtra that some of the dealers were indulging in providing accommodation entry by issuing bogus bills without supply of any goods or material. The assessee was also one of the beneficiaries who has availed accommodation entry from three parties aggregating to Rs. 42,72,178/-. Notice under section 148 dated 13.11.2014 was served upon the assessee. The assessee was supplied with the reasons for re-opening. The Assessing Officer proceeded for re-assessment. During the re-assessment proceeding, the assessee was asked to furnish the supporting documentary evidences to substantiate the purchases from all three parties. The assessee furnished the address of all three parties. The Assessing Officer issued notice under section 133(6) to all the parties at the addresses provided by assessee. The notices sent by Assessing Officer were returned back with the remark "not known". The assessee was asked to prove the genuineness of the purchases. The assessee furnished the copy of bank statement and the details of purchases. The contention of the assessee and the evidence furnished by Assessing Officer was not accepted by Assessing Officer holding that the onus to prove the genuineness of purchases were upon the assessee. The assessee filed

merely evidence that purchases were made through account payee cheque, which is not conclusive proof when genuineness of transaction is in doubt. The Assessing Officer on the basis of decision of Hon'ble Gujarat High Court in CIT vs. Simit P. Sheth (356 ITR 451 (Guj.)) disallowed 12.5% of the alleged non-genuineness purchases being profit earned from such purchases. On appeal before the Id. CIT(A), the action of Assessing Officer was confirmed. Thus, 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 the service of notice of hearing through RPAD for the date of hearing fixed for today. Therefore, we left no option except to hear the submission of Id. DR for the Revenue and to decide the case on the basis of material available on record. The Id. DR for the Revenue supported the order of lower authorities. The Id. DR for the Revenue further submits that Investigation Wing of Income-tax Department and the Sale Tax Department, Government of Maharashtra made a full-fledged enquiry, the parties from whom the assessee has shown the purchases are bogus hawala dealers. The hawala dealers were engaged in issuing the bogus bills without delivery of any material or goods. The assessee is one of the beneficiaries who have availed accommodation bill only to inflate the expenses and to bring out the profitability in order to avoid the tax. The Id. DR for the Revenue further

submits that the lower authority has already given sufficient relief to the assessee. The assessee is not entitled for any further relief.

4. We have considered the submission of Id. DR for the Revenue and perused the material available on record. We have noted that the Assessing Officer has identified the disputed/hawala purchases from three parties of Rs. 42,72,178/-. However, while passing the assessment order, the Assessing Officer added only 12.5% of said purchases as estimated profit earned on such purchases. The assessing officer disallowed the purchases to the extent of profit embedded in the alleged bogus purchases on the basis of decision of Hon'ble Gujarat High Court in Simit P Sheth(supra). The Id. CIT(A) confirmed the action of Assessing Officer. We have noted that the assessee is engaged in the business of ferrous & non-ferrous metal. Therefore, considering the nature of business activities of the assessee, we do not find any illegality or infirmity in the order passed by lower authorities. No documentary evidence or any submission explaining the fact is filed by assessee. Therefore, we are not inclined to interfere with the finding of lower authorities. Hence, ground of appeal raised by assessee is dismissed.

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

Order pronounced in the open court on 03/10/2018.

**Sd/-**  
**SHAMIM YAHYA**  
**ACCOUNTANT MEMBER**

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

Mumbai, Date: 03.10.2018

SK

**Copy of the Order forwarded to :**

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

2. Respondent
4. The concerned CIT

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