

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,**  
**MUMBAI**  
**BEFORE SHRI R. C. SHARMA, AM AND SHRI AMARJIT SINGH, JM**

**I.T.A. Nos.1896/M/2018 & 1898/M/2018**  
**(Assessment Years: 2009-10 & 2011-12)**

M/s. Kumud Metal Foundry 211, Opp. Crystal Apt, Nr. Syndicate Bank, S.V. Road, Jogeshwari West, Mumbai- 400102..	Vs.	ITO Ward 31(2)(2) Room No.709, C-11, 7 <sup>th</sup> Floor Pratyshkar Bhavan, B.K.C. Bandra East, Mumbai-400051.
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No. : AA AFK5216E		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by:	Shri Ramesh K. Shah (AR)
Department by:	Ms. N. Hemalatha (Dr)

**Date of Hearing:** 10.07.2018  
**Date of Pronouncement:** 03.10.2018

**ORDER**

**PER AMARJIT SINGH, JM:**

The assessee has filed above mentioned appeals against the order dated 01.09.2017 passed by the Commissioner of Income Tax (Appeals)-42, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment years 2009-10 & 2011-12.

**I.T.A.No.1896/M/2018**

2. The assessee has raised the following grounds: -

- “1.01 *The learned CIT (A)-42 erred in not considering the fact that the notice u/s 148 of the Income Tax Act 1961, issued by the Ld, ITO, ward 31(2)(2) ,did not fulfill the conditions necessary for issue of the notice in as much as , the Ld. ITO has not brought out any independent and reliable evidences against the Appellant as to how income had escaped the assessment. He had simply relied on the information received from Sales tax department, regarding alleged bogus/hawala purchases, without doing anything further to prove that such purchases in fact were bogus in case of the Appellant and that there is any material on record TO prove that income in fact has escaped the assessment The Ld. ITO based his belief only on presumptions, surmises and conjectures.*
- 1.02 *The Appellant-firm had requested the Ld. ITO to furnish it the certified copies of Statements, Affidavits, depositions of the parties from whom the alleged bogus purchases were made, on the basis of which the sales tax department alleged and which were relied upon by the Ld- ITO, that the purchases were bogus/hawala. The certified copies of such statements asked for, was not provided to the Appellant, till the assessment was completed.*
- 1.03 *The rules of natural justice have not been observed by the Ld, ITO, though the Supreme Court in case of TIN BOX v/s CIT and Dhakeshwari Cotton Mills Ltd, v/s CIT (1954]26ITR775 [SC) observed that "an assessment mode without giving the obsesses an opportunity of setting out his case was liable to be set aside". The learned CIT(A)-42 has failed to consider this important matter which is binding on all the lower authorities.*
- 1.04 *The CIT (A)-42 erred in upholding addition of Rs.3,19,718/- being 12.5% of the alleged bogus purchases amounting to Rs.25,57,747/-. Though the overall GROSS PROFIT is 25.24%.*

*It is therefore, prayed that Ld. ITO Ward 31(2)(2) be directed to delete the addition of Rs.3,19,718/- confirmed by Ld. CIT(A)-42.”*

3. The brief facts of the case are that the assessee filed its return of income on 30.09.2009 declaring total income to the tune of Rs.7,13,988/- for the A.Y.2009-10. The return was processed u/s 143(1) of the Act on 28.12.2005. Thereafter, the case was reopened by issuance of notice u/s 148 of the Act on 26.03.2014. In pursuance of the notice, the assessee has filed the return of income which he had already filed on 30.09.2009. Thereafter, the notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The case of the assessee was reopened on account of information received from DGIT(Inv.), Mumbai in which the information from Sales Tax Authorities in connection with bogus accommodation entries providers was conveyed. The assessee took the bogus entry in sum of Rs.25,57,747/- from following 6 parties: -

(i) M/s. RJ Metal Industries	Rs.839621/-
(ii) M/s. Sivamani Traders P. Ltd.	Rs.58848/-
(iii) M/s. Vatika Trading Co.	Rs.67445/-
(iv) M/s. Sanyo Sales Corporation	Rs.51147/-
(v) M/s. Kalash Metal P. Ltd.	Rs.554662/-
(vi) M/s. Suyash Sales Corporation	Rs.986024/-

The notice u/s 133(6) of the Act were issued to the concerned parties but the said notices were not served and the assessee also failed to produce them before the AO, therefore, 30% of the bogus purchase to the tune of Rs.25,57,747/- i.e. an amount of Rs.7,67,324/- was

disallowed and added to the income of the assessee. The total income of the assessee was assessed to the tune of Rs.14,81,310/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) and the CIT(A) restricted the said addition to the extent of 12.5% of the bogus purchase. The assessee was not satisfied, therefore, the assessee has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The case of the assessee was reopened upon the information received from the Sales Tax Department in which it was conveyed that the assessee has taken the accommodation entry without actual delivery from 6 parties mentioned below: -

(i) M/s. RJ Metal Industries	Rs.839621/-
(ii) M/s. Sivamani Traders P. Ltd.	Rs.58848/-
(iii) M/s. Vatika Trading Co.	Rs.67445/-
(iv) M/s. Sanyo Sales Corporation	Rs.51147/-
(v) M/s. Kalash Metal P. Ltd.	Rs.554662/-
(vi) M/s. Suyash Sales Corporation	Rs.986024/-

The Assessing Officer restricted the addition to the extent of 30% of the bogus purchase and in appeal the CIT(A) has restricted the addition of bogus purchases to the extent of 12.5%. The Ld. Representative of the assessee has argued that the GP ratio in the year in question in his business is @ 25%, therefore, assessing the profit

ratio @ 12.5% by the CIT(A) is very high, therefore, the same is liable to be reduced in accordance with the business of the assessee. In support of this contention, the Ld. Representative of the assessee has placed reliance upon the law settled in **CIT Vs. Simit P. Sheth (2013) 356 ITR 451 (Guj) (High Court)** and the **CIT Vs. Nikunj Eximpt Enterprises (P) Ltd. (2013) 216 Taxman 171 (Bom)** and other cases & **Dhakeshwari Cotton Mills Ltd. Vs. CIT (1954) 26 ITR 775 (SC)**. However, on the other hand, the Ld. Representative of the Department has strongly relied upon the order passed by the CIT (A) in question. In the instant case, no doubt after the receipt of the intimation from Sales Tax authorities, the AO issued the notices to the relevant parties which were not served to them. Assessee failed to produce the parties before the AO. The purchases were not verifiable. The sale is not disputed. In view of the law settled by the Hon'ble Gujarat High Court in case of **CIT Vs. Simit P. Sheth (2013) 356 ITR 451 (Guj) (High Court)**, the profit ratio embedded to the bogus purchase is liable to be added to the income of the assessee. Keeping in view of the gross profit which is @ 25% in the year under consideration and in view of the nature of the business, we restrict the addition to the extent of 3% of the bogus purchase i.e. to the tune of Rs.25,57,747/- Accordingly, these issues are decided in favour of the assessee against the revenue.

**I.T.A.No.1898/M/2018**

5. The facts of the present case are quite similar to the facts of the case as narrated above in ITA. No.1896/M/2018 above. However, the figure is different, therefore, there is no need to repeat the same. The finding of the appeal bearing ITA. No.1896/M/2018 is quite applicable as mutatis mutandis. Accordingly, the present appeal is also being hereby allowed.

6. In the result, all the appeals filed by the assessee are hereby ordered to be allowed.

Order pronounced in the open court on 03.10 .2018.

Sd/-

(R. C. SHARMA)

लेखासदस्य / ACCOUNTANT MEMBER  
मुंबई Mumbai; दिनांक Dated : 03.10 .2018.

Sd/-

(AMARJIT SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER

*Vijay*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

**Sr. Private Secretary)**

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai