

IN THE INCOME-TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI  
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER  
AND SHRI PAWAN SINGH JUDICIAL MEMBER  
ITA No. 4175/Mum/2017 (Assessment Year 2009-10)

Shri Jai Pravin Gandhi 19, Ansari Road, Vile Parle (W), Mumbai-400056. <b>PAN: AEQPG3807H</b>	Vs.	ITO - 25(2)(4) Room No. 606, 6 <sup>th</sup> Floor, C-12, Bandra Kurla Complex, Mumbai-400051.
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Appellant

Respondent

Appellant by : Shri Dhaval Shah with  
Shri Abhishek Choksy (AR)  
Respondent by : Shri Rajeev Gubgotra (DR)  
Date of Hearing : 11.10.2018  
Date of Pronouncement : 11.10.2018

**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)-39, Mumbai dated 10.03.2017 for Assessment Year 2009-10. The assessee has raised the following grounds of appeal:

1] On the facts on the case, the Ld. CIT (Appeals) has erred in confirming the addition made by the Ld. A.O. in respect of Rs. 15,69,349=00.

2. Brief facts of the case are that the assessee is proprietor of M/s Gandhi Enterprises, engaged in the business of trading in Iron & Steel. The assessee filed his return of income on 30.09.2009 declaring total taxable income of Rs. 4,68,602/-. The assessment was completed under section 143(1) of the Act. Subsequently, the assessment was re-opened under

section 147 of the Act. The assessment was re-opened on the basis of information received from DGIT (Investigation) about the accommodation entries provided by various hawala dealers, who were indulging in providing bogus bill without delivery of goods. Accordingly, the assessment was re-opened under section 147 of the Act. The notice under section 148 dated 24.03.2004 was issued and served upon the assessee under section 148. The assessee filed its reply to the notice under section 148 and contended that original return filed on 30.09.2009 may be treated as return in response to the notice. The Assessing Officer proceeded for re-assessment. During the re-assessment proceeding, the assessee was confronted that DGIT (Investigation), Mumbai communicated that assessee has obtained bogus bill from seven parties aggregating to Rs. 1,25,54,789/-. The Assessing Officer issued notice under section 13(6) to all such seven parties. The notices were returned back by postal authorities with the Remark "Not known/left". The assessee was asked to substantiate the purchases. The assessee furnished his reply dated 29.12.2014. In the reply, the assessee contended that he had purchases in Iron & Steel product from various parties, copy of Ledger accounts of the parties were provided to the Assessing Officer. The assessee also contended that the purchases are accounted in the books of account and that payments were paid through account payee cheque. The goods are physically purchased, moved and supplied on Boat of Ships on their Warehouse. The material

was sold to the customer. It was also contended that profit of the business cannot be ascertained without deducting the cost of purchases. Statements showing the movement of goods from supplier to the customer were also furnished. The contention of the assessee was not accepted by Assessing Officer holding that the assessee has not furnished the delivery challan evidencing the receipt of goods by assessee, mode of transport of huge quantity of goods. The Assessing Officer on his observation that the assessee may have obtained fictitious invoices and disallowed 12.5% of the purchases of Rs. 1,25,54,789/-. On appeal before the Id. CIT(A), the action of Assessing Officer was confirmed. Therefore, further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.

3. We have heard the submission of Id. AR of the assessee and Id. Departmental Representative (DR) for the Revenue and perused the material available on record. The Id. AR of the assessee submits that the assessee has made purchases from genuine parties. All the material purchased by assessee was duly recorded in the books of account. The assessee furnished the complete statement of sale. The sale of assessee was not disputed by lower authorities. The Id. AR of the assessee further submits that the Value Added Tax (VAT) rate applicable in the trade of Iron & Steel is 4% only. The assessee has already declared Gross Profit @ 1.24% of his business based on such purchases. The Id. AR of the

assessee further submits that the addition made by Assessing Officer and sustained by Id. CIT(A) is excessive and unreasonable. In support of his submission, the Id. AR of the assessee relied upon the decision of Shri Sanjay H. Shah vs. ITO in ITA No. 5063,5064 & 5065/Mum/2017 dated 16.02.2018.

4. On the other hand, the Id. DR for the Revenue supported the order of authorities below. The Id. DR for the Revenue further submits that no straight jacket formula can be applied in cases, wherein the additions are based on the purchases sown through hawala dealers. The additions in each case depend on the fact of the particular case. the disallowance made by lower authorities are reasonable one.
5. We have considered the rival submission of the parties and have gone through the orders of authorities below. The Assessing Officer disallowed the purchases of 12.5% on his observation that the assessee has not furnished the receipt of goods and mode of transportation of huge quantity of goods. We have noted that the Assessing Officer has not disputed the sale of the assessee, nor rejected the statement of account. Rather the Assessing Officer observed that the receipt of material in question is not in doubt but the material has been received from the source best known to the assessee. The assessee has inflated the expenditure by showing higher amount of purchased price through fictitious invoices in the name of hawala dealers and disallowed 12.5% of the purchases. The Id. CIT(A)

confirmed the action of Assessing Officer on the basis of decision of Hon'ble Gujarat High Court in case of CIT vs. Simit Sheth 38 Taxmann.com 385 (Guj) that estimated profit element embedded in such bogus purchases would be 12.5%.

6. The Id. AR of the assessee vehemently submitted that the VAT rate applicable on the Iron & Steel in Bombay is only 4%. Thus, the statement of Id. AR of the assessee is not disputed by Revenue. In our view, considering the nature and trade of the assessee and the factual matrix of the case when the assessee has reconciled the entire purchases with its sale. The disallowance made by Assessing Officer and sustained by Id. CIT(A) is excessive and unreasonable.
7. We have noted that the assessee already declared GP/turnover ratio percentage at 1.24%. Therefore, keeping in view, the possibility of Revenue leakage, the disallowance on account of purchases is restricted to 8% of the aggregate of the alleged bogus purchases, which would meet the end of justice. Hence, the ground of appeal raised by assessee is partly allowed.
8. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 11 /10/2018.

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

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

Mumbai, Date: 11 .10.2018  
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**Copy of the Order forwarded to :**

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

2. Respondent
4. The concerned CIT

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