

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 1987/Mum/2018

(निर्धारण वर्ष / Assessment Year 2010-11)

आयकर अपील सं./ ITA No. 1988/Mum/2018

(निर्धारण वर्ष / Assessment Year 2011-12)

Mr. Nareshkumar Ramaji Choudhary Room No.8, Ground Floor, 58, Ragwala Building, Islampura Street, Nanubhai Desai Road, Mumba-400 004	Vs.	Income Tax Officer, Ward 19(2)(4), Piramal Chamber, Lal Bag, Mumbai-400 012
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. ADNPC6328D		

अपीलार्थी की ओर से / Appellant by : None

प्रत्यर्थी की ओर से / Respondent by : Shri SK Bepari, DR

सुनवाई की तारीख / Date of hearing:	25.10.2018
घोषणा की तारीख / Date of pronouncement :	25.10.2018

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/  
PER MAHAVIR SINGH, JM:

These appeals by the assessee are arising out of the orders of Commissioner of Income Tax (Appeals)-53, Mumbai [in short CIT(A)], in appeal No. CIT(A)-53/IT-267& 268/ITO 19(2)(4)/2017-18 vide even date 22.12.2017. The Assessments were framed by the Income Tax Officer,



Ward 19(2)(4), Mumbai (in short 'ITO/ AO') for the A.Ys. 2010-11 & 2011-12 vide dated 17.03.2016 & 18.03.2016 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the addition made by AO applying the profit rate at 12.5% of the bogus purchase. For this assessee has raised identically worded grounds in both the years except the quantum. The facts and circumstances are exactly identical in both the years and hence, we will take the facts from AY 2010-11 and will decide the issue.

3. Briefly stated facts are that the assessee engaged in the business of dealer in ferrous and non-ferrous metals. The AO received information from DGIT (Investigation), who in turn received information from Sales Tax Department, Mumbai that the assessee has made purchases from hawala parties, as listed in hawala dealers by the Maharashtra Sales Tax Department who are providing bogus bills of purchase amounting to Rs. 31,31,367/- for AY 2010-11 & ₹ 54,69,817 for AY 2011-12 as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

2010-11

<i>Name of party</i>	<i>Amount</i>
<i>Shakti Trading Co.</i>	<i>1,75,679</i>
<i>Arihant Traders</i>	<i>40,292</i>
<i>Hiten Enterprises</i>	<i>3,13,175</i>
<i>Suryadev metal (India)</i>	<i>4,30,988</i>
<i>Valiant Steel Engineering Co.</i>	<i>3,83,986</i>
<i>Shree Traders</i>	<i>1,77,188</i>
<i>PM Trading Company</i>	<i>4,48,736</i>
<i>Pakshal Steel &amp; Engineering Co</i>	<i>11,61,323</i>
	<i>31,31,367</i>

2011-12



Name of party	Amount
NB Enterprises	10,85,585
LEO Impex	2,50,001
Real Traders	7,20,895
Global Trade Impex	8,74,999
Liberty Trading Corporation	14,53,717
Rajkamal Steel	5,20,001
Sahara Traders	4,680
PM Trading Company	2,65,423
Pakshal Steel & Engineering Co	2,94,516
	54,69,817

4. The AO issued noticed under section 133(6) to the parties which returned back and assessee failed to produce these parties. During the course of assessment proceedings and during appellate proceedings, the assessee submitted documentary evidences such as payment received against such sales, receipt of material purchases, account payee cheque. According to the AO, the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of unproved purchase at 12.5% of ₹ 3,91,421/- for AY 2010-11 & ₹ 6,83,727/- for AY 2011-12 to the returned income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who confirmed the addition made by the AO by observing in para 4.7 by following the decision of Hon'ble Gujarat High court in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj) by observing as under: -

*“4.7 Even if materials have been purchases, they are not purchased from the grey market, the appellant would have benefitted by the savings of taxes. Therefore, in fact and circumstances of the case, in this particular case, it is considered most appropriate to adopt 12.5% profit which can take care of rotation of capital utilized for such transaction. Hence, in the light of finding of the Hon'ble Gujarat High Court in the case of CIT vs.*



**ITAs no.1987 & 1988/Mum/2018**

*Smit P. Sheth, 12.5% profit found to be appropriate for ascertainment of taxable income related to such transaction. This is exactly what the assessing officer has done. Thus the Grounds of appeal Nos.1 to 5 are dismissed.”*

5. I have considered the issue and gone through the facts and circumstances of the case. I find from the facts of the case and argument of both the sides that the CIT(A) has confirmed the profit rate at the rate of 12.5%, which according to me is on higher side going by the nature of business of the assessee i.e. ferrous and Non-ferrous. I am in full agreement with the contentions raised by the assessee before CIT(A) and according to me a profit rate of 12.5% is on higher side as assessee has also paid the VAT element on these bogus purchases, a further deduction in estimation of profit to the extent of 4.5% can be allowed. Hence, I direct the AO to recompute the income after applying profit rate at the rate of 8% and compute the income accordingly. The appeal of the assessee is partly allowed.

6. Similar are the facts in AY 2011-12 and hence, I direct the AO to apply profit rate at the rate of 8% on the bogus purchases.

7. **In the result, both, the appeals of assessee are partly allowed.**

Order pronounced in the open court on 25-10-2018.

आदेश की घोषणा खुले मे दिनांक 25-10-2018को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 25-10-2018

*Sudip Sarkar /Sr.PS*



**ITAs no.1987 & 1988/Mum/2018**

**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.
- //True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**