

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. 2048/Mum/2018

(निर्धारण वर्ष / Assessment Year 2010-11)

आयकर अपील सं./ ITA No. 2049/Mum/2018

(निर्धारण वर्ष / Assessment Year 2011-12)

Shri Bharatkumar T. Jain Oswal Impex B-6, Mehta Bldg, 2 nd Carpenter Street, Mumbai- 400 004	Vs.	The Income Tax Officer, - 19(1)(2), Matru Mandir, Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. ADYPJ5305L		

अपीलार्थी की ओर से / Appellant by : None
प्रत्यर्थी की ओर से / Respondent by : Shri BS Bist, DR

सुनवाई की तारीख / Date of hearing:	01.11.2018
घोषणा की तारीख / Date of pronouncement :	01.11.2018

आदेश / ORDER

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

These two appeals by the assessee are arising out of the orders of Commissioner of Income Tax (Appeals)-54, Pune [in short CIT(A)], in appeals no. CIT(A)-30/IT-2178 & 2175/ITO-19(1)(2)/2015-16 of even date 22.01.2018. The Assessments were framed by the Income Tax Officer, Ward 19(1)(2), Mumbai in short 'ITO/ AO' for the A.Ys. 2010-11 & 2011-



12 vide orders of even date 30.01.2016 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only common issue in these appeals 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, I will take the facts from AY 2010-11 in ITA No. 2048/Mum/2018 and will decide the issue.

3. Briefly stated facts are that the assessee engaged in the business of trading in Ferrous and non-ferrous metal. 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. 84,22,926/- for AY 2010-11 & ₹ 1,23,50,183/- 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>Mahavir Metal Corporation</i>	<i>558661</i>
<i>Jineshawhar Trading Company</i>	<i>646760</i>
<i>Vinayak Sales Corporation</i>	<i>108593</i>
<i>Kanak Metal Corporation</i>	<i>281160</i>
<i>Bhagyalaxmi Steel Industries</i>	<i>361616</i>
<i>Kushal Steel Corporation</i>	<i>686930</i>
<i>Vidhi Metal Company</i>	<i>1769808</i>
<i>Shree Keshar Impex Mehta Pvt. Ltd.</i>	<i>4009398</i>
<i>Total</i>	<i>84,22,926</i>

2011-12



Name of party	Amount
Mahavir Metal Corporation	1437278
Jineshawhar Trading Company	358841
Vinayak Sales Corporation	565354
Kanak Metal Corporation	667777
Bhagyalaxmi Steel Industries	1562983
Kushal Steel Corporation	1687354
Vijay Trading Company	2757425
Shree Keshar Impex Mehta Pvt. Ltd.	3313170
Total	1,23,50,183

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 ₹ 10,52,866/- for AY 2010-11 & 12.5% of ₹ 15,43,773/- 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 5.5 as under: -

“5.5 The AO has estimated this profit at 12.5%. As the purchases could not be established as genuine, the estimation made by the AO of 12.5% of the alleged bogus purchases is confirmed. However, the AO is directed to allow the GP already declared by the assessee on these alleged bogus purchases. These grounds of appeal are partly allowed.”

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 12.5% of



ITA no.2048 & 2049/Mum/2018

₹ 10,52,866/- for AY 2010-11 & 12.5% of ₹ 15,43,773/- for AY 2011-12 to the return income of the assessee, which according to me is on higher side going by the nature of business of the assessee i.e. trading in Ferrous and non-ferrous metal. 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 01-11-2018.

आदेश की घोषणा खुले मे दिनांक 01-11-2018को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 01-11-2018

Sudip Sarkar /Sr.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.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI