

आयकर अपीलिय 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. 1071/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

Smt. Ranjan Ramesh Doshi A/501, Shankeshwar Tower, Sudha Park, Shanti Path, Ghatkopar (East) Mumbai-400 077	Vs.	Income Tax Officer, Ward 27(3)(1) Ward 27(3)(1), Tower, 6, Vashi Railway Station Complex, Navi Mumbai-400 703
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AEMPD3478F		

अपीलार्थी की ओर से / Appellant by : Shri KL Vajani, AR

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

सुनवाई की तारीख / Date of hearing:	29.10.2018
घोषणा की तारीख / Date of pronouncement :	05.11.2018

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-25, Mumbai [in short CIT(A)], in appeal No. CIT(A)-25/IT-231/2015-16/290 vide dated 03.01.2018. The Assessment was framed by the Income Tax Officer, ward-27(3)(1) Mumbai (in short 'ITO/ AO') for the A.Y. 2009-10 vide dated 24.03.2015



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) directing the AO to restrict the addition made by AO being net profit percentage at the rate of 12.5 % on bogus purchases. For this assessee has raised following ground: -

“(a) On the facts and in the circumstances of the case, the Commissioner of Income-tax (Appeals), hereinafter referred to as the “CIT(A)”, has erred in confirming the disallowance of ₹ 17,63,039/- made by the assessing officer on account of purchases made from alleged suspicious dealers as listed on the web-site of the Maharashtra VAT Department.

(b) On the facts and in the circumstances of the case, the CIT(A) has erred in not appreciating correct facts of the case and also the documentary evidences laid down by the appellant.

(c) Without prejudice to any of the above grounds, on the facts and in the circumstances of the case, the CIT(A) has erred in estimating the profit margin of the impugned purchases @ 12.5% without appreciating the facts of the case of the appellant.”

3. Briefly stated facts are that the assessee engaged in the business of supplier of Industrial goods & Item. 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. 1,41,04,309/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

<i>Name of party</i>	<i>Amount</i>
<i>National Trading Co.</i>	<i>37,492</i>
<i>Siddhivinayak Trading</i>	<i>2,86,094</i>
<i>Deepali Enterprises</i>	<i>3,15,763</i>
<i>Balaji Trading</i>	<i>4,54,635</i>
<i>Rekha Trading co</i>	<i>73,008</i>
<i>Ankit Enterprises</i>	<i>85,800</i>
<i>Shree Jalaram Enterprises</i>	<i>5,63,210</i>
<i>GR Trading Link</i>	<i>6,08,514</i>
<i>Sun Enterprises</i>	<i>5,24,598</i>
<i>MR Construction</i>	<i>12,41,517</i>
<i>Shradhha Trading Co.</i>	<i>24,28,585</i>
<i>Universal Enterprises</i>	<i>43,99,100</i>
<i>Neptune Corporation</i>	<i>5,13,567</i>
<i>Mahavir Enterprises</i>	<i>81,120</i>
<i>Jay Industries</i>	<i>24,91,306</i>

4. The AO issued noticed under section 133(6) to the parties which returned back as unserved 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 ₹ 17,63,039/- to the returned income of the assessee Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) also confirmed the action of the AO by observing in paras 5.3.5 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: -



“5.3.5 In view of the facts and circumstances of the case and the judicial pronouncements cited above, what can't be disallowed or taxed in the instant case, is the excess profit element embedded in such purchases shown to have been made from aforesaid parties. As narrated earlier, the AO in this case has held that the parties from whom the purchases were made by the appellant were found to be bogus estimations ranging from 12.5% to 25% have been upheld by the Hon'ble Gujarat High Court, depending upon the facts of the case. In a number/ series of recent case involving similar set of facts as in the instant case, the Hon'ble Mumbai Tribunal as estimated the G.P. addition on account of such bogus purchases as 12.5% some of which are listed below:

.....

In view of the above discussed factual matrix and precedence, I am of the view that the AO is justified in estimating the profit element calculated 12.5% embedded in impugned purchase of ₹ 1,41,04,309 shown from the alleged hawala parties and adding the same to the total income returned. The assessment order of the AO is a well-reasoned and a speaking order giving in detail the reasons for his fair



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estimation and therefore, I do not see any reason to take In the matter different from the one taken by the Assessing Officer. The action of the AO in estimation of 12.5% GP is sustained. Thus, the grounds of appeal No 1 & 2 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. supplier of Industrial goods & Item. 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. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 05-11-2018.

आदेश की घोषणा खुले मे दिनांक 05-11-2018 की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 05-11-2018

Sudip Sarkar /Sr.PS



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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