

**आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल के समक्ष ।

**BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ ITA No. 6632/Mum/2017

(निर्धारण वर्ष / Assessment Year 2010-11)

Pawanraj N Shah 6, 394-404, Ganjawala Chawl, pathe Bapurao Marg, Falkland Road, Mumbai-400 004	Vs.	The Income Tax Officer, Ward 19(2)(5), Matru Mandir, Tardeo, Mumbai- 400 007
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AKAPS6640L</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Akash Kumar, AR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri Abirama Karthikeyan, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	18.03.2019
घोषणा की तारीख / <b>Date of pronouncement :</b>	18.03.2019

**आदेश / ORDER**

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

This appeal filed by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-29, Mumbai [in short CIT(A)], Appeal No. CIT(A)-29/IT-484/ITO-19(2)(5)/16-17 vide order dated 10.08.2017. The Assessment was framed by the Income Tax Officer, ward 19(2)(5), Mumbai (in short 'ITO/ AO') for the A.Y. 2010-11 vide order dated 04.03.2016 under section 143(3) 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 by applying the profit rate at 12.5% of the bogus purchase.

3. Briefly stated facts are that the assessee engaged in the business of trading in Metals under the name and style of M/s P Kantilal & Co. 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. 1,82,28,510/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

<b>Name of party</b>	<b>Amount</b>
<i>Harshil Feromet Pvt. Ltd</i>	<i>7,13,024</i>
<i>RJ Metal Industries</i>	<i>41,88,232</i>
<i>Triveni Metal India</i>	<i>27,38,168</i>
<i>Mumbai Metal corporation</i>	<i>1,79,088</i>
<i>Veer Industries</i>	<i>3,72,819</i>
<i>Manibhadra Metal Industries</i>	<i>1,82,450</i>
<i>Vijay Industries</i>	<i>9,86,532</i>
<i>Hans enterprises</i>	<i>1,69,728</i>
<i>Unicorn Metal Industries</i>	<i>6,20,577</i>
<i>Tyson steel and tubes Pvt. Ltd.</i>	<i>3,33,466</i>
<i>Ramani Metal corporation</i>	<i>45,19,195</i>
<i>Kanak Steel (India)</i>	<i>3,57,661</i>
<i>Wel Steel (India)</i>	<i>3,66,257</i>
<i>Bhora Metal Industries</i>	<i>4,24,893</i>
<i>Siddharth Steel corporation</i>	<i>5,71,411</i>
<i>New era enterprises</i>	<i>1,47,284</i>
<i>Rishab enterprises</i>	<i>2,00,304</i>
<i>Ronak Industries</i>	<i>15,616</i>
<i>Om shanti trading co</i>	<i>1,84,637</i>
<i>Padmavati trading co</i>	<i>1,97,590</i>
<i>Parasvnath trading co</i>	<i>3,50,139</i>
<i>Rajratan metal industries</i>	<i>4,09,439</i>



Total	1,82,28,510
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4. 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 ₹ 22,78,563 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 6 & 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: -

*“6. The brief facts are that the appellant has filed his return of Income for the A.Y.2010-11 on 16.09.2010 declaring total income of Rs.4,59,730/-. Subsequently, the AO received information from the sales tax department through the DGIT(Inv.), Mumbai that the appellant had procured bogus purchase bills totaling to Rs.1,82,28,510/- from 22 parties. The AO issued notice u/s.148 on 31.10.2015. Subsequently, notices u/s.143(2) and 142(1) were issued alongwith questionnaire. In response to the notices, details called for were submitted. The appellant is a firm engaged in the business of trading in metals. During the course of assessment proceedings, the AC asked the appellant to produce certain documents to prove the genuineness of the*



*purchases. It was submitted that barring the ledger account and cheque payments, no other documents such as lorry receipt, transportation details, delivery challans etc. were filed. The AO further held that as the assessee has provided stock statement and entries of these said purchases, the only inevitable conclusion can be drawn is that the assessee has made purchases from the open market from some other parties best known to him. The AC further held that as the purchase rate as mentioned in the suppliers sales invoice cannot be accepted, the books of accounts cannot be held as correct and therefore he rejected the books of account u/s.145(3) and further relying on the judgment of CIT vs. Simit P. Sheth 356 ITR 451 ant MIs. Bholenath Poly Fab P. Ltd. proceeded to disallow Rs.22,78,563/- i.e.12.5% of the bogus purchases of Rs.1,82,28,510/- and added the same to tie total income of the appellant. The AO has completed the assessment by determining the total income of the appellant at Rs.27,38,290/- and levied tax of Rs.12,03,030/- on the appellant. The present appeal is filed against the said assessment order.*

*7. As stated earlier, in the present case, the appellant did not attend the hearing even once nor filed any letter for adjournment. Once proceedings u/s 143(3) r.w.s 147 of the Act were initiated on the appellant, it would be*



*expected that the appeal would be duly pursued. However, in the instant case, the appellant has taken a lackadaisical approach with regard to the appellate proceedings. In view of these facts, the disallowance made by the assessing officer are upheld and the grounds raised by the appellant are dismissed.”*

5. We have considered the issue and gone through the facts and circumstances of the case. We find from the facts of the case and argument of both the sides, that the CIT(A) has applied 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. trading in metals. We are in full agreement with the argument of the learned Counsel for the assessee and according to us a profit rate of 12.5% will meet the end of justice in view of the decision of Hon'ble Gujarat High Court in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj) but assessee has also paid the VAT element on these bogus purchases, a further deduction in estimation of profit to the extent of 7.5% can be allowed. Hence, we direct the AO to recompute the income after applying profit rate at the rate of 5% 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 18.03.2019.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)  
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)  
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 18.03.2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai