

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” Bench, Mumbai**

**Before Shri Ravish Sood, Judicial Member  
and Shri N.K. Pradhan, Accountant Member**

**ITA No.1606/Mum/2018  
(Assessment Year: 2011-12)**

IMI Alloys Pvt. Ltd.  
C/o. D.C. Bothra & Co. LLP (CA)  
(formerly known as D.C. Bothra & Co.) 297,  
Tardeo Road, Wille Mansion,  
1<sup>st</sup> Floor, Opp Bank of India,  
Nana Chowk, Mumbai – 400 007

Dy. CIT 5(1)(1)  
Aayakar Bhavan,  
5<sup>th</sup> Floor, M.K. Road,  
Vs. Mumbai 400 020

PAN – AABCI5571L

**(Appellant)**

**(Respondent)**

Appellant by: Mrs. Aditi Shroff &  
Shri Harish Sharma, A.Rs

Respondent by: Shri Abi Rama Kartikiyan, D.R

Date of Hearing: 28.03.2019

Date of Pronouncement: 03.04.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed the assessee company is directed against the order passed by the CIT(A)-10, Mumbai, dated 09.10.2017 for A.Y. 2011-12, which in turn arises from the order passed by the A.O under Sec.143(3) r.w.s. 147 of the Income Tax Act, 1961 (for short 'I.T. Act'), dated 01.03.2016. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal:

- “1. That on facts of the case and in law the Ld. C.I.T.(Appeals) has erred in upholding the validity of the reassessment proceeding initiated u/s. 147 by issue of notice u/s. 148 on wrong facts and in unlawful manner.

2. *That the ld. C.I.T.(Appeals) has erred in confirming the disallowance of Rs.29,49,920/- being 12.50% of the purchases of trading goods from the alleged suspicious hawala dealers of Rs.2,35,99,360/- without properly appreciating the facts of the case and law.*

*That both the appeal grounds are independent grounds & without prejudice to each other.*

*That the appellant craves the leave to amend, alter, substitute and or to raise new or additional grounds of appeal at the time of hearing.”*

2. Briefly stated, the assessee company which is engaged in the business of supply of ferrous and non-ferrous metals had e-filed its return of income for A.Y. 2011-12 on 28.09.2011, declaring total income of Rs.28,56,617/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the I.T Act. Subsequently, on the basis of information received from the Sales Tax Department that the assessee had during the year obtained the benefit of hawala/bogus purchases aggregating to Rs.2,35,99,360/-, the A.O reopened the case of the assessee under Sec. 147 of the I.T Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have made purchases from the following alleged accommodation entry providers:

Sr. No.	Name of the Bogus Party	PAN	Amount (Rs.)
1.	Akshar Distributor Pvt. Ltd.	AAHC6544M	14,10,937
2.	Darshat Trading Pvt. Ltd.	AADCD1270D	16,26,399
3.	Ridhi Sales Corporation	AALFR 3796F	26,45,560
4.	Mukta Steel	APWPD6626G	40,30,751
5.	Evershine Enterprises	ARAPP3848C	42,04,586
6.	Reannex Impex Pvt. Ltd.	AAECR7228L	6,28,254
7.	Riddhi Siddhi Corpn	AABPP9349J	8620
8.	Ramdev Trading Co.	AALFR4783L	3,01,875
9.	Rajratan Metal (India)	ALZPJ9659A	7,28,546
10.	Padmavati Steel	AQDPB2034Q	40,30,751
11.	Kashmir Impex Pvt. Ltd.	AADCK9179J	40,95,840
		Total (Rs.)	2,35,99,360

The assessee in order to impress upon the A.O that it had made genuine purchases from the aforementioned parties, therein filed its explanation along with supporting documentary evidences. However, the A.O after deliberating on the contentions advanced by the assessee was not persuaded to subscribe to the claim of the assessee that it had entered into authentic purchase transactions with the aforementioned parties. It was observed by the A.O that since primary facts pertaining to the purchase transactions were in the exclusive knowledge of the assessee, therefore, it was its duty to provide the correct address or contact modes of the alleged suppliers. The copies of the purchase bills placed on record by the assessee to drive home its claim of having made genuine purchases from the aforementioned parties did not find favour with the A.O. In fact, it was observed by the A.O that the assessee had failed to place on record any such documentary evidence which would irrefutably prove to the hilt that the assessee had carried genuine purchases from the aforesaid parties. Insofar the claim of the assessee that it had made the payments to the alleged suppliers through account payee cheques was concerned, it was observed by the A.O that the same could not be taken as a sacrosanct basis for construing the genuineness of the purchase transactions under consideration. Apart there from, it was noticed by the A.O that a perusal of the records revealed that there was uncontroverted evidence from an impeccable source in the form of the admissions of the alleged suppliers who had admitted of issuing bogus bills of purchases. In the backdrop of the aforesaid observations the A.O concluded that the assessee had failed to discharge the onus that was cast upon it to prove the genuineness and authenticity of the purchase transactions. On the basis of his aforesaid deliberations, it was concluded by the A.O that the assessee had not made any genuine purchases from the aforementioned hawala dealers. In order

to fortify his aforesaid observations the A.O took support of the affidavits/statements of the proprietors/partners/operators of the aforementioned firms who had admitted before the sales tax authorities that they had not done any genuine business. On the basis of his aforesaid observations the A.O held a conviction that the assessee had purchased the goods from certain undisclosed suppliers operating in the open/grey market and thereafter in order to route the purchase transactions through its 'books of account' had obtained bills from the aforementioned entry providers. The A.O was of the view that the assessee by making the purchases of the goods under consideration from the open/grey market would have benefitted from procuring the same at a discounted value by saving on sales tax and other taxes. On the basis of his aforesaid conviction the A.O estimated the profit element embedded in the purchases claimed by the assessee to have been made from the aforementioned parties at 12.5% of the aggregate of such purchases and made an addition of Rs.29,49,920/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee was however not persuaded to subscribe to the same and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that as per the instructions the ground of appeal No. 1 was being not pressed. In the backdrop of the aforesaid concession on the part of the ld. A.R the **Ground of appeal No. 1** is dismissed as not pressed. Insofar the disallowance of Rs.29,49,920/- confirmed by the CIT(A) in respect of the profit element embedded in the purchases claimed by the assessee to have been

made from the open/grey market was concerned, it was submitted by the ld. A.R that the 'SMC' bench of the Tribunal in the assesses own case for A.Y 2009-10 & A.Y 2010-11 had restricted the addition to 12.5% of the aggregate value of the bogus purchases as reduced by the gross profit rate already declared by the assessee on the said transactions. On a specific query by the bench as to whether the purchases during the year under consideration were claimed to have been made from the same parties as were involved in its case for A.Y. 2009-10 & A.Y 2010-11, the ld. A.R answered in the negative. It was the contention of the ld. A.R that the lower authorities loosing sight of the VAT rate of 4% involved in the case of the assessee had exorbitantly worked out the disallowance in respect of the alleged bogus purchases @ 12.5% of the aggregate value of such purchases. Apart there from, the ld. A.R in order to fortify her contention that the GP rate for the year under consideration was 2.63%, therein took us through the submissions dated 05.09.2017 which were filed by the assessee with the CIT(A) (Page XI) of the assesses 'Paper Book' (for short 'APB').

6. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was averred by the ld. D.R that as the assessee had made the purchases from the open/grey market, therefore, the lower authorities had acted in a reasonable manner and disallowed 12.5% of the value of such purchases.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, the assessee during the year under consideration had made bogus purchases of Rs.2,35,99,360/- from the aforementioned parties. Insofar the quantification of the profit element embedded in the purchases claimed by the assessee to have

been made from the aforementioned parties is concerned, we find that both the lower authorities had taken the same at 12.5% of the aggregate value of such purchases. We find that the A.O in the course of the quantification of the profit element involved in making of purchases by the assessee from the open/grey market had categorically observed that the assessee by procuring the goods from unregulated sector would have saved on sales tax and other taxes. However, despite so observing the A.O while making the addition had lost track of the fact that the VAT rate in the case of the assessee was 4%. In our considered view, in the absence of any justifiable basis the addition towards the profit element involved in making of bogus purchases could not have been whimsically taken at 12.5% of the aggregate value such purchases. We are of the considered view that in all fairness after taken cognizance of the VAT rate of 4% applicable in the case of the assessee, the addition in respect of the alleged bogus purchases can safely and fairly be estimated at 5% of the aggregate value of such purchases. We thus in terms of our aforesaid observations modify the order of the CIT(A) and direct the A.O to restrict the addition in the hands of the assessee to Rs.11,79,968/- i.e 5% of the aggregate value of purchases of Rs. 2,35,99,360/-. The **Ground of appeal No. 2** is partly allowed in terms of our aforesaid observations.

8. The appeal of the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced in the open court on 03.04.2019

Sd/-  
(N.K. Pradhan)  
ACCOUNTANT MEMBER

Sd/-q  
(Ravish Sood)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 03.04.2019

Ps. Rohit

**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.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**