

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

**Before Shri Shamim Yahya, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No.4106/Mum/2018
(Assessment Year: 2009-10)**

Shri Ishraram G. Choudhari
Proprietor of M/s Shree Ramdev
Metal (India) 71, 1st Floor,
Ram Mandir Bldg. Bhandari
Street, Near Goldeval,
Mumbai – 400 004

The Income Tax Officer
19(1)(5),
Mumbai
Vs.

PAN – AFZPC9784P

(Appellant)

(Respondent)

Appellant by: Shri Nimesh K. Chothani, A.R

Respondent by: Shri Chaitnya Anjaria, D.R

Date of Hearing: 30.04.2019

Date of Pronouncement: 08.05.2019

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-30, Mumbai, dated 09.05.2018, 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 21.03.2015 for A.Y. 2009-10. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal:

- “1. The Learned Commissioner of Income tax (Appeals) – 30, Mumbai on the facts and in the circumstances of the case and in Law erred in confirming the action of the Assessing Officer of reopening the assessment u/s. 147 of the Act and issuing notice u/s. 148 of the Act.
2. The Learned Commissioner of Income tax (Appeals) - 30, Mumbai on the facts and in the circumstances of the case and in Law erred in

confirming estimated additions of Rs.9,33,503/- i.e @ 12.5% of total alleged un-explained expenditure oil of suspicious/non-genuine purchases of Rs.74,68,022/- made by the Assessing Officer.

3. The appellant prays to leave, add, amend or alter the above grounds of appeal on or before the final date of hearing.”

2. Briefly stated, the assessee who is engaged in the business of trading in ferrous and non-ferrous metals had filed his return of income for A.Y 2009-10 on 23.09.2009, declaring total income of Rs.3,32,090/-. 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, Maharashtra, that the name of the assessee had figured in the list of the persons who had procured bogus purchase bills from certain hawala parties, his case was reopened 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 aggregating to Rs.24,68,022/- from the following tainted parties:

Name of the hawala party	Amount (Rs.)
Siddhivinayak Steel	1,31,347/-
Deep Enterprises	2,27,915/-
Chanchal Tube Corporation	2,80,247/-
Surat Tube Corporation	94,824/-
Asian Steel	5,70,528/-
Monal Metal Alloys Pvt. Ltd.	35,974/-
Hindustan Steel Impex	4,80,767/-
Great International	5,81,978/-
Shah Industries	7,33,980/-
Newzone Multitrade Pvt. ltd.	43,30,462/-
Total	76,68,022/-

In order to verify the genuineness and veracity of the purchase transactions under consideration, the assessee was called upon by the A.O to furnish certain supporting documentary evidence viz. (i) name of the seller with current full address; (ii) PAN details; (iii) bills and

voucher numbers; (iv) description of goods purchased along with quantity, rate and amount; (v) details of goods dispatched along with date; and (vi) mode of transportation along with the details of the payments made towards purchase consideration. Apart there from, the assessee was also directed to furnish the requisite details of the corresponding sales of goods and correlate the purchases under consideration as against the same. However, the assessee failed to place on record supporting documentary evidence which could conclusively prove the authenticity of the aforesaid purchase transactions. Apart there from, the assessee despite specific directions by the A.O also failed to produce the aforementioned parties for necessary examination before him. It was observed by the A.O that despite specific directions the assessee had failed to place on record the requisite supporting documents viz. (i) delivery challans; (ii) transport receipts; (iii) goods inward register maintained at godown etc. In the backdrop of the aforesaid facts, the A.O was of the view that the assessee had failed to discharge the onus as regards proving the authenticity of the purchase transactions under consideration. Insofar, the claim of the assessee that he had made payments of the purchase consideration to the aforementioned parties through banking channel was concerned, the A.O was of the view that the same was not sacrosanct and did not conclusively prove the authenticity of the purchase transactions. In the backdrop of his aforesaid deliberations, it was observed by the A.O that the assessee had purchased the goods from the open/grey market and had only obtained the accommodation bills from the aforementioned parties. The A.O holding a conviction that the assessee by making the purchases from the unorganised sector operating in the open/grey market would have benefitted by procuring such goods at a discounted value, thus made an addition of Rs.9,33,503/- i.e @ 12.5%

of the aggregate value of the aforesaid bogus purchases of Rs.76,68,022/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) not being impressed with the contentions advanced by the assessee dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was submitted by the Id. Authorized Representative (for short 'A.R') for the assessee, that the lower authorities had erred in making an exorbitant addition /disallowance @ 12.5% of the aggregate value of the purchases which were claimed by the assessee to have been made from the aforementioned parties. In support of his aforesaid contention, the Id. A.R submitted that the G.P rate of his business of trading in ferrous and non-ferrous metals for the year under consideration was 5.93%. Further, in order to fortify his aforesaid claim that the G.P rate for the year under consideration was 5.93%, the Id. A.R drew our attention to Page 11 and Para 9 of the order of the CIT(A).

6. Per contra, the Id. Departmental Representative (for short 'D.R') submitted that as the assessee had failed to substantiate the genuineness and veracity of the purchases claimed to have been made from the aforementioned parties, therefore, the lower authorities had rightly made an addition @ 12.5% of the aggregate value of such purchases claimed to have been made from the aforementioned parties.

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 in the present case had failed to substantiate the authenticity of the purchase transactions

under consideration on the basis of any credible documentary evidence. As is discernible from the orders of the lower authorities, the assessee despite being afforded sufficient opportunity to place on record documentary evidence in support of his claim of having made genuine purchases from the aforementioned parties, viz. copies of delivery challans, transport receipts, goods inward register maintained at godown etc., failed to produce the same. Insofar, the observations of the lower authorities that the assessee had failed to substantiate the authenticity of the purchase transactions under consideration are concerned, we are persuaded to subscribe to the same. Admittedly, now when the sales of the assessee have not been disturbed, therefore, the addition in his hands was liable to be restricted only to the extent of the profit element embedded in the purchases which could safely be held to have been made by him from the open/grey market. However, at the same time we are unable to accept the estimation by the lower authorities of the profit element embedded in the purchases under consideration @ 12.5% of the aggregate value of such purchases. As a matter of fact, no cogent reason has been given by the lower authorities in working out of such profit element by applying a rate of 12.5%. We find that the **Hon'ble High Court of Bombay** had recently in its judgment in the case of **Pr. Commissioner of Income Tax-17 Vs. M/s Mohommad Haji Adam & Company (ITA No.1004 of 2016, dated 11.02.2019)**, had observed that addition as regards the purchases which were found to be bogus, was to be limited to the extent of bringing the G.P rate of such 'bogus purchases' at the same rate as that of its other purchases. In the backdrop of the aforesaid judgment of the Hon'ble Jurisdictional High Court, we are of the considered view that the addition in the case of the assessee as regards the bogus purchases of Rs. 76,68,022/- has to be worked out by bringing the G.P rate of such bogus purchases in conformity with

the G.P rate of his genuine purchases pertaining to the year under consideration. We thus in terms of our aforesaid observations restore the matter to the file of the A.O, who shall restrict the addition in the hands of the assessee in terms of our aforesaid observations.

8. The appeal of the assessee is partly allowed.

Order pronounced in the open court on 08.05.2019

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 08.05.2019
Ps. Rohit

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

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

