

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "B", MUMBAI

BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER  
AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

S.A. No. 238/Mum/2019  
(Arising in ITA No.3929/Mum/2018, AY.2009-10)  
Assessment Year : 2009-10

M/s. Bhairav Tube (India), C/o. M/s. Nakoda Metal Industries, Room No. 101, 1 <sup>st</sup> Floor, Lakdawala Sapphire Centre, 4 <sup>th</sup> Kumbharwada Lane, MUMBAI [PAN : AAEFT1198E]	Vs.	The Income Tax Officer-19(1)(2), MUMBAI
(Applicant)		(Respondent)

ITA No. 3929/Mum/2018  
Assessment Year : 2009-10

M/s. Bhairav Tube (India), C/o. M/s. Nakoda Metal Industries, Room No. 101, 1 <sup>st</sup> Floor, Lakdawala Sapphire Centre, 4 <sup>th</sup> Kumbharwada Lane, MUMBAI [PAN : AAEFT1198E]	Vs.	The Income Tax Officer-19(1)(2), MUMBAI
(Appellant)		(Respondent)

Appellant By : Shri Praful L. Vora, AR  
Respondent By : Shri Chaitanya Anjaria, DR

Date of Hearing : 24-05-2019	Date of Pronouncement : 27-05-2019
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**ORDER**

**PER RAJESH KUMAR, AM:**

By virtue of this Stay Application, the assessee seeks  
stay of demand of Rs.21,76,720/-, raised by the Assessing

Officer in the assessment framed u/s.143(3) r.w.s.147 of the Income Tax Act [Act], dated 12-03-2015.

2. We observe from the perusal of quantum appeal before us that assessee has challenged the confirmation of addition equal to 15.00 % of the bogus purchases, by CIT(A) upholding the order of the Assessing Officer. Since the issue involved in the present appeal is very small and pertains to bogus purchases, we are of the view that it would be reasonable and proper to dispose-off the quantum appeal itself instead of deciding the stay petition. When the Ld.DR was asked for his objections, if any, for hearing the quantum appeal, he expressed his willingness to argue the case. Therefore, we are deciding the appeal in the ensuing paras.

3. The facts in brief are that, the assessee filed return of income on 27-08-2009, declaring income of Rs.2,16,200/- which was processed u/s.143(1) of the Act. Thereafter, the case of the assessee was selected under CASS and order u/s.143(3) of the Act was passed on 10-10-2011, assessing the income at Rs.2,45,620/-. Thereafter, the Assessing Officer received information from the Sales Tax Department,

Government of Maharashtra that the assessee is beneficiary of hawala bogus purchase entries to the tune of Rs.3,40,69,263/- from 25 parties, the details of the same have been given by the Assessing Officer at page 2 of the assessment order. During the year, the assessee has shown Gross Profit and Net Profit of 4.41% and 0.44% respectively. Thereafter, the case of the assessee was re-opened by issuing notice u/s.148 of the Act on 28-03-2014. The assessing Officer thereafter issued show cause notice to the assessee, calling upon to furnish various details *qua* the said purchases, such as names and addresses of the sellers, PAN details and bills, vouchers, evidences of transportation etc., and payments made to the creditors, which were duly filed by the assessee. The Assessing Officer also issued notice u/s.133(6) of the Act in order to verify the said purchases. However, all the notices were returned un-served. Finally, the Assessing Officer treated the said purchases as 'non-genuine' and hawala purchases and applied 15% on such purchases to bring the said purchases to tax resulting into an addition of Rs.51,10,389/-, by framing assessment u/s.143(3) r.w.s. 147 of the Act, dt.12-03-2015.

4. In the appellate proceedings, Ld.CIT(A) after considering the contentions and submissions of assessee, sustained the addition and dismissed the appeal of assessee by sustaining the addition by holding that little higher addition of 15% was made as against 12.5% in the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Simit P. Sheth [356 ITR 451] (Gujarat).

5. After hearing both the parties and perusing the material on record, we observe that the assessee is undoubtedly a beneficiary of hawala purchase entries to the tune of Rs.3,40,69,263/-. Though, the assessee has filed various details in the form of purchase invoices, PAN details of the suppliers however notices issued by the Assessing Officer u/s.133(6) of the Act were returned un-served in all the 25 cases and consequently, Assessing Officer treated the entire purchases as 'non-genuine'. We note that the Assessing Officer, without disputing the corresponding sales, applied profit rate at 15% on such purchases, which was upheld by the Ld.CIT(A) also.

5.1. After considering the facts before us, we observe that in this type of cases, purchases are normally made from the grey market and bills are procured from the hawala operators. Thus, the assessee makes savings by non-payment of VAT and other incidental levies. We further notice that the assessee is dealing in Ferrous and Non-ferrous Metal items, in which profit rate (GP rate) will be normally ranging between 3% to 4% whereas the assessee disclosed the GP rate of 4.41% in the Books of Account. Therefore, we are not in agreement with the conclusion of Ld.CIT(A) in sustaining addition to the extent of 15% of bogus purchases. In the present case we are of the considered opinion that a profit rate of 5% would be reasonable in order to bring to tax the various types of savings such as non-payment of VAT and others charges. We, therefore, set aside the order of CIT(A) and direct the Assessing Officer to apply rate of 5% on the bogus purchases.

6. In the result, the appeal of assessee is partly allowed.

7. Since we have already disposed the quantum appeal in this case, the Stay Application filed by the assessee becomes infructuous and the same is dismissed.

*Order pronounced in the open court on 27-05-2019*

Sd/-

(MAHAVIR SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(RAJESH KUMAR)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai; दिनांक/Dated : 27-05-2019

TNMM

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), Mumbai
4. आयकर आयुक्त / CIT, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
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उप/सहायक  
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