

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA NO. 787/DEL/2016

(A.Y. 2009-10)

AGGARWAL ASSOCIATES (PROMOTERS) LTD., 10, NEW RAJDHANI ENCLAVE, VIKAS MARG, DELHI- 92 (PAN: AAACA2789D)	VS	DCIT, CENTRAL CIRCLE, GHAZIABAD
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Assessee By	SH. NIPPEN MITTAL, CA
Revenue By	SH. S.S. RANA, CIT(DR)

ORDER

PER H.S. SIDHU, JM

Assessee has filed this appeal against the impugned order dated 22.12.2015 passed by Ld. CIT(A), Ghaziabad on the following grounds:-

1. On the facts and circumstances of the case and in law, the CIT(A) has erred in confirming the addition of Rs.

3714973/- made by the AO on account of alleged unexplained purchases.

2. On the facts and circumstances of the case and in law, the addition of Rs. 3714973/- made by the AO is beyond the scope / jurisdiction of provisions of section 153A of the Income Tax Act, 1961 and the CIT(A) has erred in not holding so.

That the appellant craves leave to add one or more ground of appeal or to alter / modify the existing ground before or at the time of hearing of appeal.

2. The brief facts of the case are that a search & seizure operation u/s 132 of the Income Tax Act, 1961 was conducted on 19.10.2011 on the premises of the assessee comprising Agarwal Associates & Jainco Group of cases. In view of search operation, the group cases were centralized to Central Circle, Ghaziabad. The premises covered u/s 132 of the Income Tax Act, 1961 (in short "Act") operation were Bharat Bhawan, 10, New Rajdhani Enclave, Vikas Marg, Preet Vihar, Delhi, GF - 16, Kasturba Gandhi Marg, Cannaught Place, New Delhi (Opposite British Council). The jurisdiction order u/s 127 of the Income tax Act, 1961, in this case was passed by the Ld. Commissioner of Income Tax, Delhi - I, New Delhi communicated vide F. No. CIT - I1Centralization/20 13- 14/2816 dated 16.09.2013. Subsequently, notice u/s 153A was issued on 30.09.2013. The assessee filed return of income on 13.12.2013 declaring total income of Rs. 3,65,12,490/-. Notice. under section 143(2) was issued on

13.12.2013. Notice U/s J42(1) alongwith questionnaire was already issued on 03.12.2013. IN response to the same, the AR of the assessee attended the proceedings and filed the necessary supporting documents. The assessee is engaged in business of real estate development and related activities specifically development and sales of flats. The assessee furnished various details including statement of bank accounts and also furnished replies to the questionnaires issued that were looked into and verified. Purchases from Meet Enterprises During the year, the assessee has purchased steel from M/s Meet Enterprises for Rs. 37,14,973/- and show cause was issued on 13.03.2014 to explain the genuineness of transaction with Meet Enterprises and to explain as under:-

"Before the search, bank account standing in the name of M/s Meet Enterprises, 621111, Mimlana Road, Muzaffamagar in Punjab National Bank, Ghaziabad was enquired. The name of Prop. of the firm in account opening form is Shri .Sunil Kumar, Mimlana Road, Muzaffarnagar. A perusal of the account opening form obtained from the PNB, Ghaziabad revealed that proprietor of Mis Meet Enterprises is Shri Sunil Kumar S/o Shri Lala Ram, R/o 621/11, Mimlana Road, Muzaffarnagar with business address at Meerut Road, Surju Chungi, Muzcffarnagar. From local enquiries it was revealed that he is of no means and his statement was also recorded wherein he stated that he is a driver and that earlier he used to be a driver of one Pushkar Tyagi, Rio Shalimar Garden, Sahibabad in district of Ghaziabad and who had his business address at Nand Gram, Ghaziabad. It was stated by him that on being asked by Pushkar Tyagi,

he opened an account in the name of Meet Enterprises and signed blank cheque book at the behest of Tyagi. Apart from this he has no knowledge of Meet Enterprises/its transactions all what transactions were made through the bank. The trade tax registration No. given at the time of opening of bank account at PNB, Ghaziabad was also got verified from Trade Tax Department, Muzaffarnagar and it was found that the registration number, mentioned in the registration certificate submitted to the bank at the time of opening account, is related to Mis Kumar Traders, Meerut Road, Near Suzru Chungl, Muzoffamagar. Dy. Commissioner Varijyakar, Khand - 4, Muzzafarnagar has also mentioned that M/s Meet Enterprises is non-existent firm as per their records. Further enquiries of these cheques revealed that such amounts were cleared to the Current Account No. 095010200013086 of Mis Meet Enterprises maintained in the Axis Bank Limited, Plot No.3, Ambedkar Road, Nehru Nagar, Ghaziabad. Copy of said bank account was obtained from the Axix Bank Limited, Ghaziabad. A perusal of this account shows that the said account is also in the name of Mis Meet Enterprises with address at B - '262, Nand Gram. GDA Colony, Ghaziabad. Enquiries from Trade Tax Department revealed that the Prop. Of firm M/s Meet Enterprises, Ramdham Colony, Shivalik Nagar, Hardwar, Tin No. 05006640257 is Shri Vikas Kumar S/O Vijay Pal Singh Rio 464/A, Keshavpuri, Muzaffarnagar. Mr. Vikas Kumar was examined and he stated that he used to run the business of Meet Enterprises and that he only had one transaction in which he sold goods to National Trading Company, Roorkee and that he had no other business

transactions. He also declined to have any other bank accounts except saving bank no. 033000100362580 in PNB. New Mandl, Muzafarnagar.

You are required to explain the genuineness of expenses claimed on account of purchase of steel amounting to Rs. 3714973/- should not be treated as bogus expenditure and why the same should not be disallowed and added to the income; Furnish complete address of M/s Tehri Steels Ltd alongwith copy of account and copies of bills for supply of steels during the year. -Also furnish confirmation of account with PAN/assessment status and area/circle where assessed to income lax. Also furnish copy of bills for verification and prove genuineness of transactions; Furnish coy of account of MIs Gappu Ispat and M/s Rishav Trading Company, RA Steels with confirmation, complete address with PAll/assessment status and area/circle where assessed to income tax. Also furnish copy of bills for verification and prove genuineness of transactions; Complete information/reply of as per notice U/S 142(1} dated 21.01.2014 should be provided. "

2.1 In response to the same, the assessee replied vide their letter dated 24.03.2014 reproduced which is reproduced hereunder:-

"1. We purchased the steel from the said party as per various bills (details of bills furnished).

2. The material was supplied for our Dehradun project through trucks (details furnished).

3. Material has been received at GH-1, Awas Viaks, Near Sai Lok, Colony, Indira Nagar, GMS Road, Dehradun vide acknowledgment of receipt of material received note no. by project manager of contractor M/s V.K. Agarwal & Co. after weighing the same through public way bridge, 'Sabji Mandi, Niranjanpur, Dehradun. In the said weighing truck no. along with time of receipt of material with quantity is mentioned (details furnished).

4. The material has been used for construction at Dehradun project.

5. It might be, the Meet Enterprises purchased the said steel from M/s RA Steels whose address is Shop No.3, Rampur, Saharanpur Road, . Roorkee (Phone 9810560969 and TIN 05004093813) and Tehri Steels Ltd, Village Dhaliwala, Muni Ki Reti Post Box No. 21, Rishikesh Distt. Tehri Garwal (Phone 0135-2431083, TIN No. 05003639950]

6. The payment has been paid from our bank account vide cheques of Indian Overseas Bank, total payment amounting to Rs. 3714973/- (details enclosed).

Further, we would like to state that the material was ordered by our staff Mr. Gupta who is no more working with us neither we have no connection with M/s Meet Enterprise because last dealing with company was upto September, 2008. We have purchased the

material which is utilized for our construction site at Dehradun and the payment has been paid through account payee cheques after receiving the material which is duly certified by our contractor. Necessary certificate from the contractor M/s VK. Agarwal & Co. is enclosed confirming that the steel has been received by company through their project manager at site. So in these circumstances you are requested not to treat as bogus expenditure."

2.2 The AO observed that the assessee failed to furnish confirmation from the Meet Enterprises, even TIN no. was not verifiable. The assessee's submission was not supported by third party evidence and therefore, the expenditure treated as unexplained and unverifiable. Therefore, the expenses claimed on account of purchases amounting to Rs. 37,14,973/- from Meet Enterprises was disallowed and added to the income and assessed the income of the assessee at Rs. 4,04,06,190/ u/s. 143(3)/153A of the I.T. Act, 1961 vide order dated 30.3.2014 passed by the AO. Against the assessment order, assessee is in appeal before the Ld. CIT(A), who vide his impugned order dated 22.12.2015 has upheld the action of the AO and dismissed the appeal of the assessee. Aggrieved with the impugned order, assessee is in appeal before the Tribunal.

3. At the time of hearing, Ld. Counsel for the assessee has stated that the legal issue is covered in the favour of the Assessee by the decision of the Hon'ble High Court of Delhi in the case of CIT vs. Kabul Chawla (2015) 61 Taxman.com 412 (Delhi) and requested that assessment in

dispute may be quashed by respectfully following the order of the Hon'ble High Court of Delhi in the case of CIT vs. Kabul Chawla (2015) 61 Taxman.com 412 (Delhi). In the alternative, on the merit of the case he stated that on exactly similar facts and circumstances of the case the ITAT, Delhi 'E' Bench in ITA No. 7022/Del/2014 (AY 2008-09) vide order dated 29.4.2019 in the case of M/s Mansarovar Infratech Pvt. Ltd. (Formerly known as Garhwal Mandal Sales Pvt. Ltd.) vs. ACIT has directed the Assessing Officer to restrict the disallowance to the tune of 5% of the impugned purchases. Ld. Counsel for the assessee requested that assessee is agreed if this Bench is directed the AO to restrict the disallowance to 5% of the impugned purchases and appeal of the assessee may be disposed of accordingly being similar purchases made from M/s Meet Enterprises.

4. On the contrary, Ld. DR filed the written submission and stated that assessee has asked to show why purchase from M/s Meet Enterprises should not be treated as bogus in view of the statement of Sunil Kumar, Vikas Kumar and other information gathered from the trade tax department. He further stated the case of CIT vs. Kabul Chawla (Supra) is not applicable in the present case, hence, the same may not be accepted. He further submitted that the appeal of the assessee be dismissed by not directing the AO to restrict the disallowance of the impugned purchases. He relied upon the following case laws:-

- i) N.K. Proteins Ltd. vs. CIT (2017-TIOL-23-SC-1T)*
- ii) N.K. Industries Ltd. Vs. DCIT 292 CTR 354 (Guj)*
- iii) CIT vs. Arun Malhotra 363 ITR 195 (Del)*
- iv) CIT vs. La Medica 250 ITR 575 (Del)*
- v) Vijay Proteins Ltd. vs. ACIT 58 taxmann.com 44 (Gu)}*
- vi) Sri Ganesh Rice Mills vs. CIT (2007) 294 ITR 316 (Allahabad).*
- vi) Sanjay Oilcake Industries vs. CIT 316 ITR 274 (Gu)}*

5. We have heard both the parties and perused the records especially the orders passed by the revenue authorities alongwith the arguments advanced by both the parties and the case laws cited before us as well as the ITAT, Delhi 'E' Bench decision passed in ITA No. 7022/Del/2014 (AY 2008-09) vide order dated 29.4.2019 in the case of M/s Mansarovar Infratech Pvt. Ltd. (Formerly known as Garhwal Mandal Sales Pvt. Ltd.) vs. ACIT (Supra). We find that exactly on similar facts and circumstances of the case, the ITAT, Delhi 'E' Bench in ITA No. 7022/Del/2014 (AY 2008-09) vide order dated 29.4.2019 in the case of M/s Mansarovar Infratech Pvt. Ltd. (Formerly known as Garhwal Mandal Sales Pvt. Ltd.) vs. ACIT has directed the Assessing Officer to restrict the disallowance to the tune

of 5% of the impugned purchases wherein the same party M/s Meet Enterprises was involved. Hence, the aforesaid case of M/s Mansarovar Infratech Pvt. Ltd. is squarely applicable in the present case. For the sake of convenience, we are reproducing hereunder the relevant paras of the Tribunal's order dated 29.4.2019 in the case of M/s Mansarovar Infratech Pvt. Ltd. wherein the tribunal on exactly similar issue has directed the AO to restrict the disallowance to 5% of the impugned purchases from the same party i.e. M/s Meet Enterprises, which also involved in the present case.

"4. Grounds Nos. 2 and 3 relate to addition of Rs. 32,76,741/- representing the purchases made by the assessee company and held to be an accommodation entry .

4.1 Before us, the learned counsel for the assessee filed two paper-books containing pages from 1 to 104 and 105 to 129 and contended that denial of deduction or genuineness of purchase is not in accordance with law. In support, he contended that claim made may kindly be accepted in light of the following undisputed facts:

i) That assessee is engaged in the business of trading of cut pieces of MS Bar;

ii) That completed books have been maintained including stock register and have been examined during the course of assessment proceedings. A copy of stock register is placed at pages 93-104 of Paper Book;

iii) That books of accounts are duly audited u] s 44AB of the Act and under the Companies Act' 1956;

iv) That there was sale of Rs.9,99,91,142.04/- and purchase of Rs. 9,90,26,702.37 (page 8 of Paper Book) which have been debited in books of accounts and, there is no direct evidence to dispute or deny any of the transactions;

(a) Details of purchases (Steel) above Rs. 1,00,000/- during the year 2007-08 (Assessment year 2008-09) (pages 118-120 of Paper Book);

(b) Details of sales (Steel) above Rs. 1,00,000/- during the year 2007-08 (Assessment year 2008-09) (pages 121- 126 of Paper Book);

v) That books of accounts so maintained by the appellant company have not been rejected by the learned Assessing Officer by invoking section 145(3) of the Act and, profit declared stands accepted as such;

vi) That entire purchase and sales duly accepted and verified in sales tax order for the instant assessment year (pages 30-32 of Paper Book);

viii) That the consideration was duly discharged through banking channels as would be evident from the following evidence:

a) Copy of cheque issued by the appellant company to M/s Meet Enterprises (pages 111-113 of Paper Book)

4.2 It was further contended that in case of purchases, assessee is under a burden to establish delivery of goods and payment of consideration for such delivery. It was submitted that in the instant case, both the facts are not in dispute as the delivery of goods is duly recorded in the stock register and the fact of supply is also accepted in the sales tax order for the instant assessment year. Furthermore, as regards payment of consideration, it was also stated that such payments have been made through banking channels and there is no allegation or evidence to suggest that such payments as made by the appellant have remitted back to the supplier. It was therefore, submitted that addition so made is not in accordance with law and

therefore, may kindly be deleted. Reliance was placed on the following judgments:

i) CIT vs. Precious Jewels Corporation 205 Taxman 22 (Raj)(MaG.)

ii) ACIT v. Karam Chand Ruber Industries ITA No. 6599/ D/ 2014

iii) Manoj Sharma v. ITO 103 taxmann.com 105 (Del)

iv) CIT v. Nikunj Eximp Enterprises (P) Ltd. 372 ITR 619 (Bom)

v) CIT v. Simii P. Seth Tax No. 553/203 (Guj) dated 16.3.2013

4.3 On the contrary, the learned DR supported the action of the authorities below and relied on the following judgments:

i) N.K. Proteins Ltd. vs. CIT (2017-TIOL-23-SC-1T)

ii) N.K. Industries Ltd. Vs. DCIT 292 CTR 354 (Guj)

iii) CIT vs. Arun Malhotra 363 ITR 195 (Del)

iv) CIT vs. La Medica 250 ITR 575 (Del)

v) Vijay Proteins Ltd. vs. ACIT 58 taxmann.com 44 (Guj)

vi) *Sanjay Oilcake Industries vs. CIT 316 ITR 274 (Gu}*)

4.4 We have considered the submissions and perused the material on record. During the instant year, it is a matter of record that assessee has declared sales of Rs. 9,99,91,142/ - and purchases of Rs. 9,90,26,702/- from trading of M.S Bar. It is also noted that books of account are duly audited under section 44AB of the Act. It is also noted that out of the total purchases, purchases of Rs. 32,76,741/- have been made from one M/s. Meet Enterprises. The copies of invoices from the supplier duly stating the bill no., tin no. have also been placed on record and copies of cheques issued alongwith the receipts from whom two cheques were issued have also been placed on record. It is noted as a matter of record that according to invoices, the supplier is M/s. Meet Enterprises, Ramdham Colony, Shivalik Nagar, Haridwar and as per the receipts issued by the said supplier, it is noted that the cheques have been issued to the said supplier.

This fact is specifically evident from the invoices from pages 107 to 110 of Paper Book and receipts placed at pages 111 to 113 of Paper Book. It is also matter of

record that statement of Director of assessee has been recorded by the Investigation Wing and in the course of such investigation, he had admitted to have received supplies from MIs. Meet Enterprises, Haridwar. The purchase and sale of assessee have also been accepted in the order of sales tax for the instant assessment year, copy of which is placed at pages 32 to 34 of Paper Book. The issue, therefore, arises is that once the supplies have been received by the assessee which are duly recorded in the books of account accepted as such and also accepted in the sales tax order, would it be justified to hold that such supplies against which payments have already been made are not genuine purchases for the reason that there is another proprietorship concern by the same name i.e. Meet Enterprises at Ghaziabad. It is no doubt true that cheques issued by the assessee in the name of MIs. Meet Enterprises had been deposited in the account of MIs. Meet Enterprises, Ghaziabad instead of Meet Enterprises, Haridwar. But the sales made by the assessee have not been doubted by the Assessing Officer. It is impossible to make sales without corresponding purchases. In the stock register corresponding to the sales, purchases have been duly

recorded. In the circumstances of no irregularity observed In the inventory record, entire purchases of Rs.32,76,741/- cannot be disallowed.

4.5 In the above facts and circumstances, we are of the considered opinion that it would be inappropriate to deny the entire expenditure claimed by the assessee. We are of the opinion that at best it would be a case that purchases have been made from one party in grey market and bills have been obtained from another party i.e. accommodation entry provider. Thus, the purchases themselves cannot be said to be bogus as the same is duly recorded in the books of account of the appellant and such books stands accepted even in the impugned order of assessment.

4.6 We are of the opinion that the entire amount should not be disallowed but the disallowance should be restricted to the profit margin embedded in such amount. This view is also supported by the judgment of Gujarat High Court in the case of CIT vs. Bholu Nath, 355 ITR 290. The relevant portion of the order is as under:

"6. We are of the opinion that the Tribunal committed no error. Whether the purchases themselves were

bogus or whether the parties from whom such purchases were allegedly made were bogus is essentially a question of fact. The Tribunal having examined the evidence on record came to the conclusion that the assessee did purchase the cloth and sell the finished goods. In that view of the matter, as natural corollary, not the entire amount covered under such purchase, but the profit element embedded therein would be subject to tax. This was the view of this court in the case of Sanjay Oilcake Industries v. CIT reported in [2009] 316 ITR 274(Guj). Such decision is also followed by this court in a judgment dated August 16, 2011, in Tax Appeal No. 679 of 2010 in the case of ITO vs. Kishor Amrutlal Patel. In the result, tax appeal is dismissed.

4.7 Also the Hon'ble Gujarat High Court in the case of CIT v. Sathyanarayan P. Rathi 351 ITR 150 has held as under:

"4. We are of the opinion that the revenue ought to have preferred two appeals if the revenue was aggrieved by the Tribunal's verdict of not only rejecting its appeal but of allowing assessee. However, when we are not inclined to interfere

with the Tribunal's order on merits, we do not insist on the revenue's filing a separate appeal.

5. From the record, we noticed that the Commissioner (Appeals) as well as the Tribunal found that the purchase of raw-material, in which the assessee was trading, were only made, but not from the disclosed sources. In other words, the case against the assessee was that the purchases were made in the grey market through cash payment and some entries were obtained from certain suppliers who had not sold such goods.

6. The present case, thus, being one of only purchase but not from disclosed sources, it would be only profit element embodied in such purchase which could be added in the income of the assessee and thus, rightly so done by the Commissioner (Appeals) and the Tribunal.

7. If this be our conclusion, only question arises whether such profit element should be estimated at the rate of 30% or 12 ½%. Whenever such a question arises, some reasonable estimation is always permissible. Hardly any question of law on

such aspect would arise. Merely it is pointed out that the assessee was a trader and that the Tribunal retained 12% of the purchase towards its possible profit, we do not find any reason to entertain the appeal. In the result, Tax Appeal is dismissed."

4.8 Similar view has also been expressed in the case of CIT vs. Simit P. Sheth 356 ITR 451 wherein it has been held as under:

"6. In the present case, the Commissioner of Income-tax (Appeals) believed that when as a trader in steel the assessee sold certain quantity of steel; he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence, therefore, the Commissioner (Appeals) believed the assessee's theory that the purchases were not bogus but were made from the parties other than those mentioned in the books of account

7. That being the position, not the entire purchase price but only the profit element embedded in

such purchases can be added to the income of the assessee. So much is clear by the decision of this court In particular, the court has also taken a similar view in the case of CIT v. Vijay M. Mistry Construction Ltd. [2013J 355 ITR 498 (Guj) and in the case of CIT v. Bholanath Poly Fab (P.) Ltd. [2013] 355 ITR 290 (Guj). The view taken by the Tribunal in the case of Vijay Proteins Ltd. v. Asstt CIT [1996] 58 ITD 428 (Ahd.) came to be approved."

4.9 In the instant case, the assessee is engaged in dealing in MS Bar (Iron/ Steel Product) and has shown gross profit rate of 5.22%. We find that in the case of Sh. Sanjay H. Shah, Mumbai Vs. Income Tax Officer in ITA No.5063 to 5065/Mum/2017 for assessment year 2009-10 to 2011-12, who was also engaged in payment and some entries were obtained from certain suppliers who had not sold such goods.

6. The present case, thus, being one of only purchase but not from disclosed sources, it would be only profit element embodied in such purchase which could be added in the income of the assessee and thus, rightly so done by the Commissioner (Appeals) and the Tribunal.

7. If this be our conclusion, only question arises whether such profit element should be estimated at the rate of 30% or 12 ½%. Whenever such a question arises, some reasonable estimation is always permissible. Hardly any question of law on such aspect would arise. Merely, it is pointed out that the assessee was a trader and that the Tribunal retained 12 ½% of the purchase towards its possible profit, we do not find any reason to entertain the appeal. In the, result, Tax Appeal is dismissed."

4.8 Similar view has also been expressed in the case of CIT vs. Simit P. Sheth 356 ITR 451 wherein it has been held as under:

"6. In the present case, the Commissioner of Income-tax (Appeals) believed that when as a trader in steel the assessee sold certain quantity of steel; he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence, therefore, the Commissioner (Appeals) believed the assessee's theory that the purchases were not bogus but were made from the

parties other than those mentioned in the books of account

7. That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. So much is clear by the decision of this court. In particular, the court has also taken a similar view in the case of CIT v. Vijay M. Mistry Construction Ltd. [2013] 355 ITR 498 (Guj) and in the case of CIT v. Bholanath Poly Fab (P.) Ltd. [2013] 355 ITR 290 (Guj). The view taken by the Tribunal in the case of Vijay Proteins Ltd. v. Asstt CIT [1996] 58 ITD 428 (Ahd.) came to be approved. "

4.9 In the instant case, the assessee is engaged in dealing in MS Bar (Ironj Steel Product) and has shown gross profit rate of 5.22%. We find that in the case of Sh. Sanjay H. Shah, Mumbai Vs. Income Tax Officer in ITA No.5063 to 5065/Mum/2017 for assessment year 2009-10 to 2011-12, who was also engaged in trading of Iron & Steel product, the Tribunal restricted the disallowance to 5% of the total alleged bogus purchases observing as under:

"7. The Ld. AR of the Assessee in his submission claimed that VAT rate is only 4%. The rate of VAT

is not disputed by Revenue. In our view considering the nature of trade of assessee and the facts of the present case, the disallowance made by AO and sustained by Id. CIT(A) is excessive and unreasonable. In our view the assessee has given sufficient evidences to substantiate its purchases, on which no finding was given by the lower authorities. Moreover, no incriminating material is brought on record except assumption and presumption of AO that assessee has availed accommodation bills. The addition of alleged bogus purchased are based on third party information. We are of the considered opinion that under Income Tax Act only real income can be taxed by the Revenue. We may further note that even in cases where the whole transaction is not verifiable due to various reasons, the only taxable is the taxable ITA No. 5063/ Mum/ 20 17 to 5065/ Mum/ 2017 Shri Sanjay H Shah income component and not the substantial part of the transaction. Thus, keeping in view the assessee has paid the VAT at the applicable rate on all the purchases. Further, in our view no yardstick formula can be applied while assessing the

amount of revenue leakage. Moreover, the revenue has not disputed the consumption of steel. Hence, keeping in view of any possibility of the revenue leakage in the present case, the disallowance of purchases of steel at 5% of the purchases would meet the end of justice. Similar view was taken by Hon'ble Gujarat High Court in CIT Vs Simit P Seth [2013(356 ITR 451)] and by Hon'ble Bombay High Court in Hariram Bhambani ITA No 313 of 20 13.

8. Thus, respectfully following the decision of Hon'ble Gujarat High Court in CIT Vs Simit P Seth supra and by Hon'ble Bombay High Court in Hariram Bhambani (supra), the disallowance of cost of purchases of steel is restricted to 5% of the purchases. The assessing officer is directed accordingly. In the result the ground No. 1 of the appeal is partly allowed."

4.10 As the assessee is also involved in trading of identical products, respectfully following the decision of the Tribunal in the case of Sh. Sanjay H. Shah (supra), we direct the learned Assessing Officer to restrict the disallowance to 5% of the impugned purchase of

Rs.32,76,741/-. The grounds no. 2 & 3 of the appeal are partly allowed.”

5.1 Keeping in view of the aforesaid discussions and respectfully following the aforesaid precedents, we direct the Assessing Officer to restrict the disallowance to 5% of the impugned purchase of Rs. 37,14,973/-. Since we have already decided the appeal on merit of the case, hence, there is no need to adjudicate the legal issue.

6. In the result, the Appeal of the Assessee is partly allowed.

Order pronounced on this 09th day of July, 2019.

Sd/-

(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated the 09th day of July, 2019
SRB

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A), New Delhi.
5. CIT(ITAT), New Delhi

AR, ITAT