

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 4401/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

M/s Virat Pipes & Tubes 59 th Nanubhai Desai Road Khetwadi Main Road, Mumbai-400 004	Vs.	The Income Tax Officer Ward 19(3)(5) Mittal Court, Nariman Point
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAEFV8845L		

अपीलार्थी की ओर से / **Appellant by** : Ms. Pooja M Chhawachharia, AR

प्रत्यर्थी की ओर से / **Respondent by** : Shri Rajat Mittal, DR

सुनवाई की तारीख / Date of hearing:	27.06.2019
घोषणा की तारीख / Date of pronouncement :	24.07.2019

आदेश / ORDER

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

This appeal of the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-6, Mumbai [in short CIT(A)], in Appeal No CIT(A)-6/IT-145/17/2017-18 vide order dated 04.05.2018. The Assessment was framed by the Income Tax Officer, Ward 19(3)(5), Mumbai (in short 'ITO/ AO') for the A.Y. 2009-10 vide order dated



02.03.2015 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in on merits, in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in estimating the profit rate at 12.5% of the bogus purchases.

3. Briefly stated facts are that the assessee is engaged in the business of ferrous and non-ferrous metals. 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. 1,24,87,230/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

Name	Amount
RK Traders	1620426
Chirag Steel Centre	942344
Shubham Metal Corpn	1597674
Champion Steel India	1900515
Hans Enterprises	1313968
Madhura MetalsP Ltd	710960
Kank Guru Tubes & Metals P Ltd	509470
New ETA Enterprises	1089941
SK Engineering Co	2801932
Total	12487230

4. The AO issued noticed under section 133(6) to the parties which returned unserved and assessee failed to produce these parties. 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 ₹ 15,60,900/- 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 paras 6.3.5 & 6.3.6 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:

“6.3.5 In the present case, AO concluded that the assessee indulged in non-genuine transaction and intention of indulging in such activity is to suppress the true profits and to reduce the tax liability. Therefore, an addition on account of a higher margin of profit is fair and equitable. In the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit Sheth 356 ITR 451 (Guj) wherein also it is found that some of the alleged suppliers of steel to the assessee had not supplied any goods but had only provided sale bills and hence, purchases from the said parties were held to be bogus. The AO in that case added the entire amount of purchases to gross profit of the assessee. Ld. CIT(A) having found that the assessee had indeed purchased though not from named parties but other parties from grey market, partially sustained the addition as probable profit of the assessee. The Tribunal however,



sustained the addition to the extent of 12.5%. Taking into account the above facts, the Hon'ble Gujarat High Court held that since the purchases were not bogus but were made from parties other than those mentioned in books of accounts, only the profit element embedded in such purchases could be added to the assessee's income and concluded that no question of law arose in such estimation. As far as assessee's reliance on various decisions of Hon'ble ITAT are concerned, it is stated that they have been delivered in respect of specific facts of those cases and thus cannot be generalized.

6.3.6 The facts in the present case are exactly similar to the above case. The appellant made purchases from nine parties who are said to be hawala operators, who are indulged in providing bogus bills without supply of any material. Under these circumstances, as the appellant could not prove his claim of purchases debited to the profit & loss account, there is no other way to the AO, but to estimate the profit element embedded on such purchases. As stated earlier, the facts of the present case are exactly similar to the cited case and respectfully following the above cited decision, the action of the AO in estimating the addition @ 25% on the total



*purchases from the nine parties is confirmed.
Ground Nos.1 to 12 of the appeal are treated as
dismissed.”*

5. I have considered the issue and gone through the facts and circumstances of the case. I find from the facts of the case and argument of both the sides. The CIT(A) has confirmed 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 ferrous and non-ferrous metals. I am in full agreement with the contentions raised by the assessee before CIT(A) and according to me a profit rate of 12.5% is on higher side as assessee has also paid the VAT element on these bogus purchases. Hence, a further deduction in estimation of profit to the extent of 7.5% can be allowed. Hence, I direct the AO to recompute the income after applying profit rate at the rate of 5% of the bogus purchases 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 24-07-2019.

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 24-07-2019

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



ITA No.4401/Mum/2018

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