

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. 4388/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

Mafatlal H. Bothra C/o D.C. Bothra & Co. LLP (CA) (formerly known as D.C. Bothra * Co.) 297, Tardeo Road, Wille Mansion, 1 st Floor, Opp Bank of India, Nana Chowk, Mumbai-400 007	Vs.	The Income Tax Officer, Ward 19(2)(3), Matru Mandir 2 nd Floor, Tardeo Road, Mumbai-400 007
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AGGPB3538C		

अपीलार्थी की ओर से / **Appellant by** : Shri Rajkumar Singh/
Ms. Aditi Shroff, ARs

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

सुनवाई की तारीख / Date of hearing:	26.06.2019
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)-30, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-30/19(2)(3)/570/2015-16 vide order dated 26.04.2018. The Assessment was framed by the Income Tax Officer, Ward 19(2)(3) Mumbai (in short 'ITO/ AO') for the A.Y. 2009-10 vide order dated



27.02.2015 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.33,15,621/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

Name	Amount
Advance Steelage	2,19,314
Roopam Impex	4,03,738
Tyson Steel and Tubes P. Ltd.	3,35,400
Vighneswar impex	3,97,812
Shanti Pipes & Tubes	9,71,893
Osian Steel Impex	9,97,464
Total	33,15,621

4. 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 ₹ 4,14,453/- to the returned income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who confirmed the action of the AO by observing in para 7



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:

“7. The Ground No. 2 of the appeal is about addition made by the AO by treating 12.5% of the non genuine purchases as income of the appellant. During the course of appellate proceedings, even after being given opportunity on various dates with sufficient time to comply, appellant did not furnish any submissions to present the case, hence it is assumed that appellant has no explanation to offer or to furnish any evidence/ detail in support of this ground of appeal. Therefore, the only choice left is to agree with the decision of the AO to estimate the profit @12.5% of the total non genuine purchases of Rs. 33,15,621/- relying on the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit Sheth (2013) 38 Taxmann.com 385 (Gu)). Accordingly Ground No. 2 of the appeal is 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



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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

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