

**आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री शमीम याहया लेखा सदस्य के समक्ष।

**BEFORE SRI MAHAVIR SINGH, JM AND SRI SHAMIM YAHYA, AM**

आयकर अपील सं/ ITA No. 5125/Mum/2018

(निर्धारण वर्ष / Assessment Year 2011-12)

M/s Lalit Silk Industries  
2<sup>nd</sup> Floor, 229 Masjid Bundar Road,  
Mumbai-400 003

..... Appellant  
/ अपीलार्थी

स्थायी लेखा सं / PAN - AAAFL0138J

v/s

The Income Tax Officer  
Ward 17(2)(2), Aayakar Bhavan, M.K. Road,  
Mumbai-400 020

.....Respondent  
/ प्रत्यर्थी

अपीलार्थी की ओर से / Appellant by	:	Shri Vimal Punamiya, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Akhtar H Ansari, DR

सुनवाई की तारीख / Date of hearing:	19.09.2019
घोषणा की तारीख / Date of pronouncement :	19.09.2019

**आदेश / ORDER**

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

This appeal of assessee is arising out of the order of Commissioner of Income Tax (Appeals)-57, Mumbai in Appeal



No. Nil dated 12.06.2018. The assessment was framed by the Income Tax Officer- ward 17(2)(2), Mumbai (in short ITO/ AO) for AY 2011-12 vide dated 01.03.2016, under section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue on merits, in this appeal of assessee is against the order of CIT(A) directing the AO to restrict the addition made by AO being estimating profit percentage at the rate of 8 % on bogus purchases.

3. Briefly stated facts are that the assessee engaged in the business of manufacture/ processor of Yarn. 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. 1,22,84,132/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

Sl No.	Name of the Hawala Party	Amount
1.	Adinath Trading Company	67,42,347
2.	Suraj Sales Corporation	55.41,785
	Total	1,22,84,132

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 ₹ 15,35,516/- to the returned income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restrict the addition at 8% by observing in para 4 as under: -

*"4. The facts of the case are that the assessee is engaged in the business of trading in steel. The AO contended that as per information received in office DGIT(Inv), Mumbai and subsequently, from the Sales Tax Department, Mumbai, it was found that the M/s Adinath Trading Company and M/s Suraj Sales Corporation was providing accommodation entries without doing any actual business from whom assessee has claimed total purchases ₹ 15,35,516/-. Subsequently, the assessee was asked to furnish all relevant evidence to establish that goods have actually been delivered/ supplied. The assessee was also asked to furnish its explanation on the purchases purported to have made from the party and also asked to show cause as to why the expenditure*

*claimed in respect of purchase shown to have made from the aforesaid dealer should not be disallowed.*

*Regarding 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal the assessing officer has discussed in detail in the assessment order why GP at the rate of 12.5% is being disallowed. I find that it is excessive and keeping in mind other similar cases where I have reduced the GP @ 8%. I direct the AO to calculated GP @ 8%. Hence, appellant gets relief of (12.5%-8%). Hence, this ground is partly allowed.”*

5. We have considered the issue and gone through the facts and circumstances of the case. We find that the CIT(A) has restricted the addition made by AO by estimating the profit @ 8% of the bogus purchases. We also find that the Revenue has not doubted the sales carried out of the bogus purchases by the assessee. The assessee also maintain stock tally, payments are made by cheque, and in that eventuality only alternative left with is application of profit rate. But now, the learned counsel for the assessee made only submission that estimated profit @ 8% by the CIT(A) is on higher side. Hence, we direct the AO to recompute the income after applying profit rate at the rate of



5% and compute the income accordingly. The appeal of the assessee is partly allowed.

**6. In the Result, all the appeal of the assessee is partly allowed.**

Order pronounced in the open court on 19.09.2019.

Sd/-

(शमीम याह्या / SHAMIM YAHYA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 19.09.2019

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

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai