

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. 5161/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

आयकर अपील सं/ ITA No. 5162/Mum/2018

(निर्धारण वर्ष / Assessment Year 2010-11)

Mr. Milan Kantilal Shah

203, Ami Villa Society, Amrut Nagar, Ghatkopar
West Mumbai-400 086

..... Appellant
/ अपीलार्थी

स्थायी लेखा सं / PAN – AAMPS9266N

v/s

The Income Tax Officer,

Ward 27(2)(3), 4th Floor, Vashi Income Tax,
Mumbai

.....Respondent
/ प्रत्यर्थी

अपीलार्थी की ओर से / Appellant by	:	Dharmil Jhaveri, AR
प्रत्यर्थी की ओर से / Respondent by	:	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:

These appeals of assessee are arising out of the orders of Commissioner of Income Tax (Appeals)-25, in Appeal No. CIT(A)-25/IT-266, 808/2015-16/169 & 132 dated 16.05.2018 & 05.06.2018. The assessments were framed by the Income Tax



Officer- ward 27(2)(3), Mumbai (in short ITO/ AO) for AY 2009-10 & 2010-11 vide dated 17.03.2015 & 26.03.2013, under section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in these two appeals of assessee is against the order of CIT(A) confirming the addition made by AO applying the profit rate at 12.5% of the bogus purchase. For this assessee has raised identically worded grounds in both the years except the quantum. The facts and circumstances are exactly identical in both the years and hence, we will take the facts from AY 2009-10 and decide the issue.

3. Briefly stated facts are that the assessee engaged in the business of dealing in iron and steel 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. 74,09,802/-/- for AY 2009-10 & ₹ 1,47,66,139/- for AY 2010-11 as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

2009-10

Sl No.	Name of the Hawala Party	Amount
1.	National Trading Co.	6,02,482/-
2.	Siddhivinayak Trading Co.	8,68,835/-
3.	Deepali Enterprises	19,44,747/-
4.	Omkar Trading Co.	28,18,301/-
5.	Rekha Trading Co.	7,01,245/-
6.	Renuka Sales Corpn.	27,87,561/-
7.	Bright Corpn.	15,20,106/-
8.	M.R. Corporation	99,240/-
9.	Prayosha TradingCo.	3,69,793/-



10.	Sun Enterprises	3,75,046/-
11.	Asian Steel	11,561
12.	S.S. Enterprises	8,43,962/-
13.	Pravesh Enterprises	18,15,925/-
14.	H.S. Trading Co.	7,435/-
15.	Total	1,47,66,139/-

2010-11

Sl No.	Name of the Hawala Party	Amount
1.	National Trading Co.	53,407/-
2.	Omkar Trading Co.	8,55,622/-
3.	Deepali Enterprises	9,42,601/-
4.	Renuka Sales Corporation	48,825/-
5.	Rekha Trading Co.	3,73,666/-
6.	Leo Impex	4,07,680/-
7.	Amar Enterprises	4,15,069/-
8.	BRIGHT Corporation	8,20,207/-
9.	Asian Steel	8,010/-
10.	S.S. Enterprise	3,67,338/-
11.	Pravesh Enterprises	21,17,377/-
	Total	74,09,802/-

4. The AO issued noticed under section 133(6) to the parties which returned back 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 ₹ 18,45,770/- for AY 2010-11 & ₹ 9,26,225/- for AY 2011-12 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 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. In view of the above discussed factual matrix and precedents, I am of the view that the AO is justified in estimating the profit element calculated @ 12.5% embedded in impugned purchases of ₹ 1,47,66,139/- shown from the alleged hawala parties and adding the same to the total income returned. The assessment order of the AO is a well-reasoned and a speaking order giving in detail the reasons for his fair estimation and therefore, I do not see any reason to take a view in the matter different from the one taken by the Assessing Officer. The action of the AO in estimation of 12.5% GP is sustained. Thus, the ground of appeal No 1 & 2 are dismissed."

5. We have considered the issue and gone through the facts and circumstances of the case. We find from the facts of the case and argument of both the sides that the CIT(A) has confirmed the profit rate at the rate of 12.5%, which according to us is on higher side going by the nature of business of the assessee i.e. iron and steel. We are in full agreement with the contentions raised by the assessee before CIT(A) and according to us a profit rate of 12.5% is on higher side as assessee has also paid the VAT element on these bogus purchases, a further deduction in estimation of profit to the extent of 7.5% can be allowed. Hence, we direct the AO to recompute the income after



applying profit at the rate of 5% and compute the income accordingly. The appeal of the assessee is partly allowed.

6. Similar are the facts in AY 2010-11 and hence, we direct the AO to apply profit at the rate of 5% on the bogus purchases.

7. In the result, both, the appeals of assessee are 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