

**आयकर अपीलिय 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. 5127/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

Shri Kamleshkumar G Sanghvi  
M/s Kamlesh Steel & Engg. Co.  
Room No. 11, Mapkar Building,  
1<sup>st</sup> Floor, 1<sup>st</sup> Panjarapole Land,  
Mumbai-400 004

..... Appellant  
/ अपीलार्थी

स्थायी लेखा सं / PAN - ACAPS6537N

v/s

The Income Tax Officer  
Ward 19(2)(2)  
MATRU Mandir, Nana Chowk Mumbai-400 007,

.....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)-53, Mumbai in Appeal No. CIT(A)-53/IT-306/ITO-19(2)(2)/2017-18 dated 16.05.2018.



The assessment was framed by the Income Tax Officer- ward 19(2)(2), Mumbai (in short ITO/ AO) for AY 2009-10 vide dated 26.02.2015, under 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 engaged in the business of trading in Ferrous & 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. 53,12,159/- 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.	RJ metal industries	11,54,611
2.	Subh Labh Metal And alloys / bright enterprises	2,14,592
3.	Rolex trading company	3,93,120
4.	Victoria trading co	67,757
5.	Kanak Steel (india)	36,457
6.	Wel steel (India)	2,45,107
7.	Rajratan metal india	7,51,936
8.	Priya stel corporation	2,87,164
9.	Rajendra metal industries	3,42,026
10.	Prakash steel & Engineering Co.	3,78,449
11.	Monal metal alloys Pvt. Ltd.	14,24,109
	Total	53,12,159

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 ₹ 6,64,020/- to the returned income of the assessee Aggrieved, assessee preferred the appeal before CIT(A), who sustained the disallowance at 12.5% of the bogus purchases by observing in para 5.7 & 5.8 and 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:

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*"5.7 I am guided by the ratio of decision of the Hon'ble Gujarat High Court in the case of CIT Vs Simit P. Sheth pronounced on 16.1.2013 in tax appeal No.5531 of 2012 wherein the Hon'ble Court have held that when the total sale is accepted by the AO, then the entire purchases cannot be added to the income of the appellant. The Hon'ble Court have, therefore, held that fair profit ratio would be needed to be added back to the income of the assessee.*

*5.8 Even if materials have been purchased, they are not purchased form*

*these parties and may be in cash from undisclosed parties. By purchasing from the grey market, the appellant would have benefitted by the savings of taxes. Therefore, in fact and circumstances of the case, in this particular case, it is considered most appropriate to adopt 12.5% profit which can take care of the rotation of capital utilized for such transaction. Hence in the light of finding of the 1-lonbie Gujarat High Court in the case of CIT vs. Simit P. Sheth, 12.5% profit is found to be appropriate for ascertainment of taxable income related to such transaction. This is exactly what the assessing officer has done in this case. Thus, the Ground of Appeal No. 1 is 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 applied 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. Ferrous and non-ferrous. I am in full agreement with the argument of the learned Counsel for the assessee and according to me a profit rate of 12.5% will meet the end of justice in view of the decision of Hon'ble Gujarat High Court in



the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj) but 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, I 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. In the Result, all the appeal of the assessee is partly allowed.**

Order pronounced in the open court on 19.09.2019.

Sd/-

(शमीम याहया / 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