

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI**

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.6031/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2009-10)

Shri Pradeep H. Doshi Prop. Of Navjyoti Steel Suppliers, 94/100, 5 th Kumbarwada, 2 nd Floor, 2 nd Pathan Street, Mumbai- 400004.	बनाम/ Vs.	Income Tax Officer, 19(2)(5) Room No.221, 2 nd Floor, Matru Mandir, Tardeo, Mumbai-400007.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHPD4722B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Neel Khandelwal	
Revenue by:	Shri Chaitanya Anjaria (DR)	

सुनवाई की तारीख / Date of Hearing: 03/09/2019
घोषणा की तारीख /Date of Pronouncement: 12/09/2019

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 24.09.2018 passed by the Commissioner of Income Tax (Appeals) -7, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2009-10.

2. The assessee has raised the following grounds: -

“The ground or grounds of appeal are without prejudice to one another.

On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in upholding the action of the AO in re-opening of the assessment u/ s. 147 of the Income Tax Act, 1961.



a) On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the addition of Rs.7,63,343/- made by the AO to the income of the Appellant on account of possible profit element @ 12.5% embedded in purchases made through alleged non-genuine parties on the basis of information of the Sales Tax Department about suspicious dealers having rejected the accounts u/s. 145(3).

b) The Id. CIT(A) failed to appreciate that

i) all the purchases are genuine beyond doubt and supported by sufficient materials;

ii) all the goods purchased from these parties have been backed by corresponding sales which are accepted to be genuine;

iii) the books of account maintained by the Appellant are correct and complete in accordance with the method of accounting regularly and consistently followed by the Appellant.

iv) the gross profit ratio shown by the Appellant is quite reasonable;

v) nothing has been brought on record by the AO that money has exchanged the hands in lieu of payment made for these purchases by account payee cheque; and

vi) the AO had neither provided copy of materials and statements relied upon by him nor allowed any opportunity to the Appellant to cross examine those parties who have been alleged to have provided the accommodation entries of such purchases.

c) In reaching to the conclusion and confirming such addition made by the AO, the Id. CIT(A) omitted to consider relevant factors, considerations,

principles and evidences while he was overwhelmed, influenced and prejudiced by irrelevant considerations and factors.

d) Without prejudice, the rate or percentage of profit element embedded in such purchases as fixed by the AO and confirmed by the CIT(A) is excessive and unreasonable on the facts of the case.

e) Without prejudice, the Appellant is eligible for set off of gross profit shown in the books of account as the AO has held the quantum of profit @ 12.5% of such purchases and therefore the incremental percentage of profit should only be disallowed.



The Id. CIT(A) erred in holding that levy of interest u/s. 234B of the Income Tax Act, 1961 is mandatory. The Appellant denies his liability for such interest.

F. The Id. CIT(A) erred in holding that the ground raised disputing initiation of penalty proceedings u/s.271(1)(c) is premature. The Appellant denies his liability for such penalty.

The Appellant craves leave to add, alter, amend or delete any or all of the Wove grounds of appeal.”

3. The brief facts of the case are that the assessee filed his return of income on 30.09.2009 declaring total income to the tune of Rs.3,85,200/- for the A.Y. 2009-10. The case of the assessee was reopened by issuance of notice u/s 148 of the Act dated 21.02.2014. The reason for reopening the assesment was also communicated to the assessee. Thereafter, the notices u/s 143(2) & 142(1) of the Act were also issued and served upon the assessee. The case of the assessee was reopened on the basis of information received from the DGIT(Inv.), Mumbai in which it was conveyed that the assessee has taken the accommodation entries of the bogus purchase in sum of Rs.61,06,746/- from the following 9 parties.

Name of the party	FY	Amount
Nandkishore Sales Agency	2008-09	2,03,069
Remi Trading Co. P. Ltd.	2008-09	7,67,986
Key Stone Tubes P. Ltd	2008-09	2,70,826
Vijay Industries	2008-09	7,42,981
Satnarayan Steel & Engg	2008-09	11,36,258
Bajarangi Steel & Metal P. Ltd.	2008-09	11,79,017
Padmavati Metal & Alloys	2008-09	14,46,087
Gurukul Steel	2008-09	70,810
Tyson Steel and Tubes P. Ltd.	2008-09	2,89,712



Total		61,06,746
-------	--	-----------

4. After the reply of the assessee, the AO restricted the addition to the extent of 12.5% of the bogus purchase of Rs.61,06,746/- which comes to Rs.7,63,343/-. The total income of the assessee was assessed to the tune of Rs.11,48,540/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

5. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The assessee failed to produce the sufficient evidence before the AO to prove the purchase as genuineness. The assessee also failed to produce the suppliers before the AO also. In the instant case, sale is not doubted. It is settled law that when the sales are not doubted then the 100% disallowance addition cannot be made and in this regard we also find support in law settled by the Hon'ble Jurisdictional High Court in the case of **Nikunj Eximp Enterprises (in writ petition no.2860 dated 18.06.2014)**. In the present case the facts of the case seems that the assessee has made purchase from the grey market. Making purchases through the grey market gives the assessee savings on account of non-payment of tax of and others at the expenses of the exchequer. In view of the said circumstances, no harms seem if the restriction of the bogus purchase be confirmed to the extent of 12.5% of the bogus purchase. The Ld. Representative of the assessee has argued that when only the profit earned by assessee on these bogus transactions is to be taxed the gross profit already shown by the assessee and offered to tax should be reduced from the standard 12.5% being directed to be disallowed on account of bogus purchase.



ITA No. 6031/M/2018
A.Y.2009-10

6. Up on careful consideration, we find strength in the submission of the Ld. Representative of the assessee as otherwise it will be double jeopardy to the assessee. Accordingly, we modify the order of the Ld. CIT(A) and direct that the disallowance in this case be restricted to 12.5% of the bogus purchases as reduced by the gross profit rate already declared by the assessee on these transactions. Accordingly, we set aside the finding of the CIT(A) and allowed the claim of the assessee.

7. In the result, the appeal filed by the **assessee is hereby ordered to be allowed accordingly.**

Order pronounced in the open court on 12/09/2019.

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 12/09/2019

Vijay Sr. P.S.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No. 6031/M/2018
A.Y.2009-10

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//

(Sr. Private Secretary)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai