

IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH MUMBAI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND SHRI PAWAN SINGH JUDICIAL MEMBER  
ITA No. 5381/Mum/2018 (Assessment Year 2010-11)

Shri Chhagnaram Gomaji Parmar, Room No. 39, 3 <sup>rd</sup> Floor, Kesuri House 68/74, Sant Sena Maharaj Marg, Mumbai-400004. <b>PAN: AOWPP2668B</b>	Vs.	ITO - 19(1)(3) R.No. 223, Matru Mandir, Tardeo, Mumbai-400007.
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Appellant

Respondent

Appellant by

: None

Respondent by

: Shri Akhtar H. Ansari (Sr. AR)

Date of Hearing

: 09.10.2019

Date of Pronouncement

: 14.10.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee is directed against the order of Id. CIT(A)-30, Mumbai dated 11.06.2018 for Assessment Year 2010-11. The assessee has raised the following grounds of appeal:

**Following grounds of appeal are submitted without prejudice to one another:**

- 1) On the facts and circumstances of the case and in law, the Ld. First Appellate Authority (CIT(A)-30) has erred in sustaining the addition made by the Income Tax Officer, Ward 19(1)(3), Mumbai, treating part of our genuine bona fide purchases as bogus purchases without appreciating that all of our purchases are genuine and bona fide real purchases and that the appellant has adduced various evidences, none of which have been belied or disproved by the AO. The said addition made by the AO and sustained by the CIT(A) may therefore kindly be deleted.

2) On the facts and circumstances of the case and in law; the Hon'ble CIT(A)-30 has erred in sustaining the assessment order passed by the AO, without appreciating that the AO has erred in invoking the provisions of See 147 and reopening our assessment for the year under consideration. The impugned order is therefore liable to be quashed.

3) On the facts and circumstances of the case and in law, the Hon'ble CIT(A)-30 has erred in sustaining the addition made by the AO, on the basis of materials / information, if any, collected behind our back, without giving us copies thereof and opportunity to cross examine the witness and to rebut the same. Therefore, such evidence is no evidence in the eyes of law. The impugned order is therefore against the principles of natural justice and hence illegal and void on this score alone.

4) On the facts and circumstances of the case and in law, the Hon'ble CIT(A)-30 has erred in sustaining the addition made by the AO, ignoring the fact that the appellant has produced all and every details, documents and records proving genuineness of his impugned purchases and that too without pointing out any infirmity in the details, documents and records produced by the appellant. Such order cannot be sustained in the eyes of law. It may please be quashed.

5) On the facts and circumstances of the case and in law, the Hon'ble CIT(A)-30 has erred in sustaining the addition made by the AO, without appreciating that the appellant is a reseller only. He sold what he has purchased. None of his sales are suspected. His books of accounts are not rejected. His books of accounts are audited. Quantity details are submitted which has not been disproved by the AO. Hence, no part of purchases can be termed as bogus and disallowed. The Hon'ble CIT(A)- 30 has erred in sustaining the disallowance.

6) Alternatively and without prejudice to the foregoing and on the facts and in the circumstances of the case and in law, the Hon'ble CIT(A)-30 has erred in sustaining the addition made by the AO by estimating addition at 12.5% without rejecting the books of accounts and without giving credit for the GP already declared b the appellant. The impugned order may, therefore, please be quashed.

7) Your appellant therefore humbly prays that the impugned assessment order may kindly be quashed, addition sustained by the CIT(A) may kindly be deleted and such other and further reliefs, as may be favourable to the appellant, may kindly be granted as may be thought fit to meet the ends of justice.

2. Brief facts of the case are that the assessee is an individual, filed his return of income on 25.09.2010 declaring total income of Rs. 2,22,067/- for Assessment Year 2010-11. The return of income was processed under section 143(1). The assessment was re-opened under section 147 on the basis of information received from Sale Tax Department, Government of Maharashtra that certain hawala operators are indulging in providing accommodation bills without actual delivery of goods. The Sale Tax Department, Government of Maharashtra referred the list of such hawala dealers and the beneficiary to the DGIT (Investigation), Mumbai. The name of assessee appeared in the list of beneficiary. The assessee allegedly made the purchases of Rs. 51,11,890/- from such hawala dealers. On the basis of information, the Assessing Officer made a belief that the income of the assessee escaped assessment, therefore, re-opened the assessment under section 147. Notice under section 148 was issued on 28.10.2014 to the assessee. The assessee in response to the notice under section 148 filed its reply dated 28.10.2014 and stated that original return filed on 25.09.2010 under section 139(1) by assessee be treated as return in response to the said notice. The Assessing Officer after serving notice under section 143(2) dated 13.07.2015 proceeded

for re-assessment. During the assessment, the Assessing Officer noted that the assessee has shown purchases from the following parties, which was declared as hawala dealers by the Sale Tax Department, Government of Maharashtra.

<b>Name of the parties</b>	<b>Bill amount (Rs.)</b>
Siddhivinayak Steel	2,20,979/-
Asian Steel	16,39,924/-
Surat Tube Corporation	19,03,534/-
Atul Traders	9,108/-
Kamal Traders	9,518/-
Shree Gururaj Metal Corp.	71,685/-
Dinesh Steel (India)	77,917/-
Pioneer Metals & Alloys	2,17,074/-
Heena Metals	2,57,421/-
Siddhivinayak Pipe & Fittings	3,49,440/-
Shanti Pipes & Tubes	3,55,290/-
<b>Total</b>	<b>51,11,890/-</b>

3. The assessee was asked to substantiate the purchases and to furnish the name of dealers, Bills &, Vouchers, description of goods purchased, quantity, rate and amount, the date of dispatch of goods and the name of place along with mode of transportation by road or other mode, Vehicle Number, and payment details. The assessee was also asked to furnish the corresponding sales of goods. The Assessing Officer noted that assessee could not produce any evidence during the course of hearing nor accepted the report of Sale Tax Department. The Assessing Officer in order to verify the transaction issued notice under section 133(6) of the Act. The notice was returned back unserved by the Postal Department with the remark 'Not known or Left'. The onus to prove the

genuineness of purchases was on assessee, the assessee failed to discharge his onus. The assessee was asked vide notice dated 08.02.2016 to produce the parties for examination before Assessing Officer on 28.02.2016. The assessee failed to bring the said parties. The Assessing Officer concluded that the purchases shown from the alleged bogus parties remained unverifiable and that the assessee obtained bogus bills to inflate the expenses. The Assessing Officer rejected the books of account by invoking the provision of section 145(3). The Assessing Officer after considering the material before him and contention of assessee disallowed 12.5% of the aggregate of total of non-genuine/alleged hawala purchases by taking view that it would be just fair and proper to make addition of profit element embedded in such bogus purchase, in the assessment order dated 29.02.2016 passed under section 143(3) r.w.s 147.

4. On appeal before the Id. CIT(A), the action of Assessing Officer and disallowances made on account of bogus purchases was sustained. Further, aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.
5. None appeared on behalf of assessee despite the service of notice of hearing of appeal through registered post. The acknowledgment card of the notice duly received on behalf of assessee on 21.08.2019 by the person, whose signature is legible as 'Ashok', is on record. Therefore,

we left no option except to hear the ld. DR for the revenue and to decide the appeal on the basis of material available on record.

6. We have heard the submission of ld. Departmental Representative (DR) for the revenue and perused the material available on record. The ld. Departmental Representative (DR) for the revenue supported the order of lower authorities. The ld. DR further submits that Investigation Wing of Income-tax Department has made full-fledged investigation in respect of hawala traders. The hawala traders were/are engaged in providing bogus bill without actual delivery of goods. The assessee has shown bogus purchases only to inflate the profit. The ld. DR for the revenue submits that the Assessing Officer has given sufficient relief. The Assessing Officer has reasonably estimated the disallowances. The assessee is not entitled for any further relief. On re-opening the ld. DR submits that there was sufficient tangible material/information in the form of information from DGIT (Investigation) that Sale Tax Department, Government of Maharashtra has unearthed the scheme about the hawala entry provider, who were engaged in providing bogus bills, therefore, the Assessing Officer has sufficient reason for making belief that the income of the assessee has escaped assessment.
7. We have considered the submissions of ld. DR for the revenue and perused the record. Ground No.1 & 3 to 6 relates to disallowance of 12.5% of the bogus purchases. The Assessing Officer during the

assessment issued show-cause notice to the assessee to prove the genuineness of the purchases and to produce the parties for verification. The Assessing Officer noted that the assessee failed to produce the parties. The Assessing Officer also made investigation by issuing notice under section 133(6) to all the dealers. The notices sent to dealers were returned back with the remark of Postal Authorities 'Not Known or Left'. The Assessing Officer also noted that the assessee could not produce the proof of delivery, transport of goods and inward register maintained at the godown. The Assessing Officer has not disputed the sale of the assessee. The Assessing Officer after rejecting the books of account made addition to the extent of profit element embedded in such transactions and restricted the disallowance to the extent of 12.5% of the alleged non-genuine purchases. The Id. CIT(A) confirmed the action of Assessing Officer by following the decision of Hon'ble Gujarat High Court in CIT vs. Simith P. Seth [356 ITR 451 (Guj.)].

8. We have noted that the assessee is engaged in the business of dealing in MS pipe, MS round and Ms Sheets etc. The lower authority has not examined the Gross Profit (GP) or profitability already declared by the assessee on such non-genuine and other genuine purchases. Therefore, considering the facts and circumstances of the case, we direct the Assessing Officer that disallowance be restricted to 12.5% - (minus) the

GP declared by assessee on such bogus purchases. In the result, the grounds of appeal raised by assessee are partly allowed.

9. Ground No.2 relates to validity of re-opening under section 147 of the Act. The Id. DR for the revenue vehemently submitted that there was sufficient tangible material/information before the Assessing Officer in the form of information from DGIT (Investigation) that Sale Tax Department, Government of Maharashtra has unearthed the scheme about the hawala entry providers, who were engaged in providing bogus bills. We have also noted that at the time of reopening mere reason to believe that income chargeable to tax has escaped assessment for that year is sufficient. In our view, at the time of issuance of notice of re-opening there is no need to go behind the sufficiency of such reasons when there was a live link between the material at the hands of the Assessing Officer and his formation of belief that income chargeable to tax has escaped assessment is sufficient. Thus, we do not find any merit in the ground no.2 raised against the validity of re-opening. In the result, Ground No.2 of the appeal is dismissed.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 14/10/2019.

**Sd/-**  
**SHAMIM YAHYA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 14.10.2019  
SK

**Copy of the Order forwarded to :**

1. Assessee
3. The concerned CIT(A)
5. DR "SMC" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

**BY ORDER,**

**Dy./Asst. Registrar  
ITAT, Mumbai**