

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “SMC”, MUMBAI  
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)

ITA No. 5439/Mum/2018(Assessment year : 2011-12)

M/s Mehta Trading Corporation, R 141F, Grd P 139/7, Vrindawan Chawl Lakdi Bunder Road, Darukhana, Mazgaon, Mumbai-400 010 PAN : AA AFM2829F	vs	ACIT – 24(2), Mumbai
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Appellant by	None
Respondent by	Ms. Samastha Mullamadi
Date of hearing	14-10-2019
Date of pronouncement	14-10-2019

**ORDER**

Per Pawan Singh, JM :

1. This appeal filed by the assessee is directed against the order of Id. CIT(A)-36, Mumbai dated 30.05.2018 for Assessment Year 2011-12. The assessee has raised the following grounds of appeal:

“1) The Commissioner of Income Tax (Appeal) - 36, Mumbai [hereinafter referred as CIT(A)] erred in confirming the addition of Rs. 9,97,9427- being 12.5% of alleged bogus purchases of Rs. 79,83,9427- made by the Appellant. The Appellant submits that (i) it has actually bought the materials (ii) made the payment towards materials bought through banking channel (iii) material bought has been sold and accounted in the books of the Appellant which has been accepted by the AO. Therefore, under the facts and circumstances of the case, the Appellant prays that the addition made by the AO and confirmed by the CIT(A) shall be deleted.

2) In the alternative and without prejudice to the above, the CIT(A) erred in confirming the addition 9,97,9427- being 12.5% of alleged bogus purchases

made by the Appellant without appreciating the fact that the Appellant itself has declared gross profit @ 11.44% on the alleged bogus purchases.”

2. Brief facts of the case are that the assessee firm is engaged in the business of trading of ferrous and non ferrous steel, filed return of income for AY 2011-12 on 24-08-2010 declaring total income at Rs.18,72,940 /-. 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. 78,83,540/- 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 u/s 148 dated 16.03.2015 was served on the assessee. Reasons recorded were also supplied to the assessee. The Assessing Officer after serving notices under section 143(2) and 142(1) 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>
1	Shree Navdurga Steel Traders	79,83,540
	<b>Total</b>	<b>79,83,540</b>

3. In order to verify the transaction, the assessing officer issued notice under section 133(6) to the party. The notice was return back unserved by the postal authorities. The assessee was asked to substantiate the purchases and issued show-cause notice as to why the aforesaid transaction should not be treated as non-genuine. The assessee filed its explanation and furnished the copy of ledger account and proof of payment through cheques. The Assessing Officer not accepted the explanation furnished by assessee and noted that the assessee has not produced Lorry Receipt, Transportation Details etc. The Assessing Officer after considering the material available before him and the submission made by assessee concluded that the assessee was in possession of goods and has shown the sale against the purchases. The sale is not possible without purchases. The Assessing Officer concluded that the assessee may have purchased goods from other suppliers without

bills, which is commonly known as grey market and the assessee is beneficiary of margin of grey market. The Assessing Officer on his abovesaid observation disallowed 12.5% of the aggregate of total of non-genuine/alleged hawala purchases in assessment order dated 16.03.2016 passed under section 143(3) r.w.s 147.

4. On appeal before the Id. CIT(A), the action of Assessing Officer was sustained. Further, aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.
5. None appeared before us, when the appeal was taken for hearing, despite the fact that notice sent through Registered Post with Acknowledgement Card (RPAD). Thus, we left no option, except the hear the submissions of the Id. DR and to decide the appeal on the basis of material available on record. The Ld. DR submitted that the 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 Id. 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.

6. We have considered the submission of Id DR for the revenue and gone through the record carefully. The short issue for our adjudication is whether the disallowance of alleged bogus purchase @ 12.5% is reasonable or not. We have noted that the assessee in the grounds of appeal has mentioned that the assessee has declared Gross profit (GP) @ 11.44%. The Hon'ble jurisdictional High Court in M Haji Adam & Co. in ITA No. 1004 of 2016 dated 11.02.2019 held that addition in respect of bogus purchase to be limited to the extent of bringing the GP rate on bogus purchase at the same rate as other genuine purchases.
7. Therefore, considering the fact of the present case and the nature of business activities of the assessee and by following the decision of Hon'ble Bombay High Court, we direct the Assessing Officer to restrict the addition with regard to bogus purchases by bringing the GP rate on such purchases at the same rate as that of other genuine purchases. Needles to say that before making addition, the Assessing Officer shall grant opportunity to the assessee before passing the order in accordance with law.

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

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

Sd/-

Sd/-

(Shamim Yahya)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 14<sup>th</sup> October, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai