

आयकरअपीलीयअधिकरण“SMC” न्यायपीठमुंबईमें।

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

श्रीमहावीरसिंह, न्यायिकसदस्य एवं श्रीजी. मंजुनाथलेखासदस्यकेसमक्ष।

BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM

आयकर अपील सं./ ITA No. 1404/MUM/2018

(निर्धारण वर्ष / Assessment Year:2009-10)

आयकर अपील सं./ ITA No. 1405/MUM/2018

(निर्धारण वर्ष / Assessment Year:2010-11)

Mr. Girish H. Jain (prop. Of Regent Steel & Engineering & Co.) 22, Room No. 2, 2 nd Floor, 23/25/27, Guruchhaya Building, 1 st Parsiwada, V.P. Road, Mumbai-400 004	vs.	The Income Tax Officer, Ward-19(1)(3) Room No. 220, 2 nd Floor, Matru Mandir, Tardeo Road, Mumbai-400 007
अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायीलेखासं./PAN No. ADSPJ9929L		

अपीलार्थीकीओरसे/ Appellant by	:	Shri Dinkle Hariya, AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Akhtar H Ansari, DR

सुनवाईकीतारीख/ Date of hearing:	17-10-2019
घोषणाकीतारीख/ Date of pronouncement :	17-10-2019

आदेश/ ORDER

**महावीरसिंह, न्यायिकसदस्य/
PER MAHAVIR SINGH, JM:**

These appeals of the assessee are arising out of the orders of Commissioner of Income Tax (Appeals)-53, Mumbai [in short CIT(A)], in Appeal Nos. CIT(A)-53/IT-271(1)(c),272/ITO-19(1)(3)/2017-18

vide order dated 01.01.2018. The Assessments were framed by the Income Tax Officer, Ward-19(1)(3) Mumbai (in short 'ITO/ AO') for the A.Ys. 2009-10, 2010-11 vide order dated 14.03.2015 & 29.02.2016 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue on merits, in these appeals of assessee is against the order of CIT(A) confirming the addition of the AO in estimating the profit rate at 12.5% of the bogus purchases. The facts and circumstances are exactly identical in both the AYs i.e. AY 2009-10 & 2010-11. Hence, we take the facts from AY 2009-10 in ITA No. 1404/Mum/2018 and will decide the issue.

3. Briefly stated facts are that the assessee engaged in dealing steel rods, Pipes, circle, ring and plates. 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.58,73,038/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

S.No.	Name of the seller	Amount
1.	Manish Industrial Corporation	6,64,560/-
2.	Dhanera Metal Corporation	21,40,037/-
3.	Manibhadra Metal Industries	1,38,136/-

4.	Mico Steels	8,91,508/-
5.	R.K. Metal	18,42,983/-
6.	Bhora Metal Industries	1,95,814/-
	Total	57,73,038/-

4. According to information received the name of these parties were appearing in the list of hawala entry operators as supplied by sales Tax Department of Maharashtra. The hawala traders admitting before the sales tax authorities in their deposition that they were providing only accommodation purchase bills on commission basis without being actual purchase/ sale of goods. The AO during the course of scrutiny assessment proceedings required the assessee to file the details of purchase. The assessee filed copies of purchase bills from the above said parties, copies of ledger extract and copies of bank statements to prove the payments by cheque. The AO required the assessee to produce these parties for verification but assessee expressed his inability to do so. According to the AO, the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of profit rate @ 12.5% of unproved purchase at Rs.7,34,130/- to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who sustained the disallowance 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 in para 6.6 as under: -

"6.6 Even if materials have been purchased, they are not purchased from these parties and may be in cash from un-disclosed 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 utilised for such transaction. Hence, in the light of finding of the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth, 12.5% profit is found to be appropriated for ascertainment of taxable income related to such transaction. This is exactly what the assessing officer has done. Thus the grounds of appeal 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. The CIT(A) has confirmed the profit rate at the rate of 12.5%, which according to us is on very high going by the nature of business of the assessee i.e. Trading in 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. The normal profit in the Iron and Steel cannot be @ 12.5% rather it remains almost at 5 to 6% on the given facts of the case. Even in this case, the assessee has also paid the VAT element on these bogus purchases. Hence, we direct the AO to recompute the income after applying profit rate at the rate of 5% on these bogus purchases and compute the income accordingly.



6. As regards to AY 2010-11, the same are the fact and hence, taking consistent view, we direct the AO to recompute the income after applying profit rate at the rate of 5% on these bogus purchases in this year also.

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

Order pronounced in the open court on 17th October, 2019.

Sd/-

Sd/-

(जी. मंजुनाथ /G MANJUNATHA)

(महावीरसिंह /MAHAVIR SINGH)

(लेखासदस्य / ACCOUNTANT MEMBER)

(न्यायिकसदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated:17-10-2019.

सुदीप सरकार, व. निजी सचिव / Sudip Sarkar, Sr.PS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार (Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai