

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

ITA NO. 5431/MUM/2018

A.Y : 2009-10

Ritesh Rajmal Sanghvi
Shreepati Castle, D-Wing,
Office No. 5, 1st floor, 11th Khetwadi
Back Road, Mumbai 400 004.
PAN : BRFPS7047P (Appellant)

vs. ITO, Ward-19(3)(1),
Mumbai. (Respondent)

Appellant by : Shri Vimal Punamiya
Respondent by : Shri Akhtar H. Ansari

Date of Hearing : 14/10/2019
Date of Pronouncement : 14/10/2019

ORDER

PER MAHAVIR SINGH, JUDICIAL MEMBER

This appeal is filed by the assessee against the order of CIT(A)-30, Mumbai dated 22.06.2018 for assessment year 2009-10 which in turn has arisen from order of Assessing Officer passed under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act') dated 05.03.2015.

2. The only issue in this appeal of assessee is against the order of CIT(A) estimating the profit rate @ 10% as against the estimation by the Assessing

Officer @ 12.5% of the alleged bogus purchases. For this, the assessee has raised the following grounds on merit:

“1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeal) erred in

(a) arriving at the conclusion that purchases made of Rs.8981372/- from parties mentioned in assessment order are not genuine and not made from them but from other sources.

(b) estimating rate of profit at 10% on alleged bogus purchases over and above gross profit declared of 7.59% by the appellant on such purchases.

(c) confirming addition of Rs.898137/- made by the Assessing Officer to the total income of the appellant.”

3. It is noticed that there is issue of reopening also, but the learned counsel for the assessee stated that once a reasonable estimation is made, he has instructions from the assessee not to press ground nos. 2 and 3. Hence, we have heard the issue on merits and proceed to decide the issue on merits.

4. The brief facts are that the assessee-firm is engaged in the business of trading in ferrous and non-ferrous metals. The Assessing Officer, during the course of assessment proceedings, noticed that the Department has received information from the Sales Tax Department regarding issue of *hawala* bills and accommodation entries by several parties in Mumbai and assessee is also a beneficiary of such *hawala* bills and accommodation entries. According to the Assessing Officer, assessee has received bogus bills/accommodation entries from 2 parties to the tune of Rs.89,81,372/-, details of which are as under: -

<i>Sr.No.</i>	<i>Name of the hawala parties</i>	<i>Amount</i>
1	Shakti Trading Co.	21,65,825
2	S.K. Engineering Co.	68,15,547
	<i>Total</i>	<i>89,81,372</i>

The Assessing Officer noted that assessee could not file vital documents such as delivery challans, transport receipts, octroi receipts for payment of octroi duty, receipt of weight bridge for weighing goods, excise gate pass, goods inward register maintained at godown, warehouses, storage houses, etc. According to him, the DGIT (Inv.) Wing, Mumbai has also carried out inquiries after receipt of information from the Sales Tax Department of Maharashtra regarding issue of *hawala* bills and accommodation entries and noted that all these alleged purchases by assessee are bogus. Accordingly, the AO estimated the profit rate on these alleged bogus purchases at 12.5% and made addition of Rs.11,22,672/-. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) restricted the profit rate to 10% by observing in Para 6.8 and 6.9 as under: -

“6.8 Hon'ble Gujarat High Court in the case of CIT vs Simit P. Sheth 356 ITR 451 (Guj), upheld the decision of ITAT, which confirmed the addition @ 12.5% of the total bogus purchase. Taking into account the facts of the case, the Hon'ble Gujarat High Court held that since the purchases were not bogus, but were made from parties other than those mentioned in books of accounts, only the profit element embedded in such purchases could be added to the assessee's income and as such no question of law arose in such estimation.

6.9 The appellant made purchases from fifteen parties who are said to be hawala operators, who is indulged in

providing bogus bills without supply of any material. Independent inquiries concluded revealed that no such party is existing in the given address. When asked to produce the party during the assessment proceedings by the AO, appellant expressed his inability to do so. In the present case, A.O estimated the profit percentage on bogus purchases as 12.5%. The simple issue to be decided is whether the percentage adopted by the AO is correct in line of business i.e. trading in ferrous and non-ferrous metals. As noticed above, in the similar circumstances of bogus purchases, Hon'ble Gujarat High Court estimated the additional advantage towards tax benefit at 12.5%. Taking all the facts into consideration and in view of the fact that appellant has disclosed GP of 7.59%, the A.O is directed to restrict the estimation to 10% of the non genuine purchases of Rs.89,81,372/-. Appeal on Grounds No. 1 & 2 are treated as 'Partly Allowed'."

Aggrieved, now Revenue is in appeal before the Tribunal.

5. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the Assessing Officer has admitted that these purchases are no doubt accommodation entries, but ultimately assessee had made purchases from the grey market because sales are not doubted. Due to this discrepancy, the Assessing Officer estimated the profit rate @ 12.5%, which was restricted by the CIT(A) to 10%. We noted that the nature of business of assessee is of trading in ferrous and non-ferrous metals, which attracts VAT @ 5%. At least, this could have been saved by the assessee because the profit earned by the assessee is already embedded in the sales, which is not doubted by the lower authorities. Hence, we direct the Assessing

Officer to restrict the profit rate @ 5% of the alleged bogus purchases and estimate the income accordingly.

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

Order pronounced in the open court on 14th October, 2019.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Date : 14th October, 2019

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai