

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

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5667/MUM/2018
Assessment Year: 2009-10**

Income Tax Officer-19(3)(1),
2nd Floor, Room No 202,
MatruMandir, Tardeo Raod,
Mumbai.

Vs. Shri Ramesh (HUF),
Prop. M/s. Ramdev Impex,
138/30, 3rdKumbharwad,
Mumbai-400004

Appellant

**PAN No. AAJHR8745Q
Respondent**

Revenue by : Mr. Bhera Ram, DR
Assessee by : None

Date of Hearing : 21/11/2019
Date of pronouncement : 28/11/2019

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-30, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3)r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

Though the case was fixed for hearing on 21.11.2019, neither the assessee nor his authorized representative appeared before the Bench on the above dates. As there is non-compliance on the part of the assessee, we are

proceeding to dispose off this appeal on merits, after examining the documents available on record.

2. The grounds of appeal filed by the revenue read as under :

1. Whether on the facts and in the circumstance of the case and in Law, the Ld. CIT(A) erred in restricting the addition made by the AO as addition made in the case was on the basis of information received from external sources in the nature of law enforcement agencies.
1. Whether on the facts and in the circumstance of the case and in Law, the Ld.CIT(A) ought to have upheld the addition instead of restricting it to have upheld The addition instead of restricting it to 12.5% since there was a consent of the counsel of assessee for addition @25% during the course of assessment proceedings.

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2009-10 on 27.08.2009 declaring total income of Rs.5,01,330/-. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills from 25 parties amounting to Rs.3,07,72,603/-, the Assessing Officer (AO) issued notice u/s 148 dated 24.02.2014 to re-open the assessment. During the course of re-assessment proceedings, the AO vide notice u/s 142(1) dated 23.05.2014 asked the assessee to furnish copies of sales bills, transportation documents, delivery challans/bills, lorry receipts/bills, ledger account, date-wise payments, bank statement, stock register, sales tax return, VAT challan etc. In response to it, the assessee filed before the AO copies of bills of the hawala parties, bank statements, paid sales tax/VAT challans, ledger of the hawala parties. However, the AO was not convinced with the above submission of the assessee and relying on the

findings of the Sales Tax Department, Government of Maharashtra estimated the profit @ 25% of the disputed purchases of Rs.3,07,72,603/- which comes to Rs.76,93,151/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 06.07.2018, the Ld. CIT(A) by following the judgment of the Hon'ble Gujarat High Court in *CIT v. Simit P. Sheth* 356 ITR 451 (Guj) restricted the disallowance made by the AO @ 25% to 12.5%.

5. Before us, the Ld. Departmental Representative (DR) submits that the assessee failed to file the complete details as called for by the AO u/s 142(1) of the Act and therefore, the AO has rightly estimated the profit @ 25% of the disputed purchases of Rs.3,07,72,603/- which comes to Rs.76,93,151/- and the same should be confirmed.

6. We have heard the Ld. DR and perused the relevant materials on record. In the instant case, the assessee is a re-seller in ferrous and non-ferrous metals. We find that the assessee could not file the complete details as called for *vide* notice u/s 142(1) dated 23.05.2014. However, the assessee filed before the AO the bills of hawala parties, bank statements, paid sales tax/VAT challans and ledgers of the hawala parties. The AO could have made some verifications/inquiries on the basis of the above documents filed before him. We find that the AO has not made even an elementary inquiry in this case. In such a scenario, considering the nature of business of the assessee, the Ld. CIT(A) has rightly estimated the profit @ 12.5% of the disputed purchases of Rs.3,07,72,603/-. Therefore, we affirm the order of the Ld. CIT(A).

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open Court on 28/11/2019.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 28/11/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai