

**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. 5823/MUM/2018
Assessment Year: 2010-11**

ACIT-17(3), Room No. 137
1st floor, Aayakar Bhavan,
M.K. Marg, Mumbai-
400020.

Vs. Shri Rajendra A. Chokshi, M-9
Steel Yard House Iron
Market, Mumbai-400009.

Appellant

**PAN No. AACPC9930F
Respondent**

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

Date of Hearing : 19/11/2019
Date of pronouncement : 25/11/2019

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-28, 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'). Originally, the case was fixed for hearing before the Tribunal on 21.09.2019. The notice sent by the Registry by RPAD fixing the case on the above date was received by the assessee on 27.08.2019. The assessee moved an application before the Tribunal on 23.09.2019 seeking adjournment. Accordingly, the case was adjourned to 19.11.2019. The assessee was also informed about it. However, there was no appearance by the assessee or his

authorized representative before the Tribunal on 19.11.2019. Because of such non-compliance, we are proceeding to dispose off this appeal on merits by examining the materials available on record.

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

On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the A.O to restrict the addition of Rs.24,42,669/-being 5% of bogus purchases of Rs.4,88,53,382/- to 3.5% thereby giving a relief of Rs.7,32,801/- to the assessee without considering the fact that the aforesaid addition to the total income of the assessee was made by A.O on the basis of information received from an authoritative external source i.e. Maharashtra Sales Tax Department through DGIT (Inv.) Mumbai.

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2010-11 on 08.01.2011 declaring total income of Rs.22,11,120/-. The assessee trades in iron & steel. During the course of assessment proceedings, the Assessing Officer (AO) received information from the Director General of Income Tax (Inv.), Mumbai [in short DGIT(Inv.)] that the assessee had obtained accommodation entries in the form of bogus purchases amounting to Rs.4,88,53,382/- from 23 parties. In response to a query raised by the AO to establish the genuineness of the transaction, the assessee filed copies of (i) ledger account of the purchase party; (ii) purchase bills and (iii) payment details through account payee cheques. However, the AO was not convinced with the above submission of the assessee for the reason that it had not furnished any ledger account confirmation from the aforesaid dealers; that the assessee had not produced the suppliers of disputed purchases and the assessee had also not furnished

any quantitative details as to how the items purchased from the said hawala dealers were utilized/consumed in the process of its business. Considering the above facts, the AO followed the decision of the Hon'ble Gujarat High Court in the case of *CIT v. Bholanath Ply Fab P. Ltd.* (2013) 355 ITR 290 (Guj) and estimated the profit @ 5% of the bogus purchases of Rs.4,88,53,382/- which comes to Rs.24,42,669/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) followed his own order for the previous assessment year 2009-10 which has been affirmed by the ITAT. In that order for the AY 2009-10, the Ld. CIT(A) had restricted the disallowance to 3.5% of the total purchases which were unverifiable.

5. The Ld. Departmental Representative (DR) submits that the estimation @ 5% made by the AO be sustained as it is reasonable considering the fact that the assessee failed to furnish any ledger account confirmation from the said dealer and also the assessee failed to furnish any quantitative details as to how the items purchased from the aforesaid parties were utilized/consumed in the process of its business, including the sales made.

6. We have heard the Ld. DR and perused the relevant materials on record. As mentioned earlier similar issue arose before the Tribunal in the previous assessment year 2009-10. The Tribunal agreed with the estimation @ 3.5% adopted by the CIT(A). Facts being identical, we follow the said order of the Co-ordinate Bench and confirm 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 25/11/2019.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER
Mumbai;

Dated: 25/11/2019

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.

//True Copy//

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai