



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**

**SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

ITA no.5728/Mum./2018  
(Assessment Year : 2010-11)

Income Tax Officer  
Ward-19(1)(2), Mumbai

..... Appellant

v/s

Shri Bipin Manakchand Jain  
48, Ground Floor, 1<sup>st</sup> Carpenter Street  
Near C.P. Tank, Mumbai 400 007  
PAN – ADOPJ2631H

..... Respondent

Revenue by : Shri Bhera Ram  
Assessee by : None

Date of Hearing – 21.11.2019

Date of Order –

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The captioned appeal has been filed by the Revenue challenging the order dated 3<sup>rd</sup> July 2018, passed by the learned Commissioner OF Income Tax (Appeals)-30, Mumbai, for the assessment year 2010-11.

2. The solitary dispute in the present appeal is on the issue of part deletion of addition made by the Assessing Officer on account of non-genuine purchases.

3. When the appeal was called for hearing, no one was present on behalf of the assessee. It is seen from record, the hearing notice issued per registered post with A/D, has returned back unserved. Considering the nature of dispute, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material on record.

4. Brief facts are, the assessee, an individual, is engaged in trading in ferrous and non-ferrous metal through his Proprietary concern M/s. Romex Tubes and fittings. For the assessment year under consideration, the assessee filed his return of income on 26<sup>th</sup> September 2010, declaring total income of ₹ 4,05,320. The return of income filed by the assessee was initially processed under section 143(1) of the Income Tax Act, 1961 (for short "*the Act*"). Subsequently, on the basis of information received from the DGIT (Inv.), Mumbai, as well as the Sales Tax Department, Government of Maharashtra, the Assessing Officer found that certain purchases claimed to have been made by the assessee in different assessment years are non-genuine as they have been purchased from entities who have been identified as hawala operators providing accommodation bills. On the basis of such information, the Assessing Officer re-opened the assessment under section 147 of the Act. During the assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases. As alleged by the

Assessing Officer, assessee failed to produce the selling dealers as well as the bank details. The assessee also could only furnish the copies of the purchase bills and audit report. Therefore, holding that the genuineness of purchases claimed to have been made by the assessee were not proved through supporting evidence, the Assessing Officer treated them as non-genuine and disallowed 15% out of purchases worth ₹ 2,75,48,854, which worked out to ₹ 41,32,328. The assessee challenged the aforesaid disallowance by filling appeal before the first appellate authority.

5. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) agreed with the Assessing Officer that the assessee was unable to prove the genuineness of purchases made during the assessment year. However, he restricted the addition to 6.5% of the non-genuine purchases.

6. The learned Departmental Representative strongly relying upon the observations of the Assessing Officer submitted, the disallowance @ 15% of the non-genuine purchases is reasonable, hence, the addition made by the Assessing Officer should be restored.

7. We have considered the submissions of learned Departmental Representative and perused the material on record. It is evident, the Assessing Officer completed the assessment ex-parte to the best of

his judgment, since, the assessee did not appear and furnish any evidence to prove the genuineness of purchases. However, ultimately, the Assessing Officer has made the addition on account of bogus purchase @ 15% on such purchases. As could be seen, after considering the submissions of the assessee, learned Commissioner (Appeals) has noted that the applicable VAT rate on such transaction is 4%. Further, he observed, in case of CIT v/s Simit P. Sheth, [2013] 356 ITR 451 (Guj.), the Hon'ble Gujarat High Court has upheld the decision of the Tribunal in restricting the addition to 12.5% of the non-genuine purchases on the basis of profit percentage and VAT. Applying the same logic, he has restricted the addition to 6.5% (4% VAT + 2.5% profit margin). In our view, the aforesaid decision of the learned Commissioner (Appeals) is not only reasonable but the correct approach to quantify the addition. Therefore, we do not find any reason to interfere with the decision of the learned Commissioner (Appeals) on the issue. The ground raised is dismissed.

8. In the result, appeal stands dismissed.

Order pronounced in the open Court on 28.11.2019

**Sd/-**  
**N.K. PRADHAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 28.11.2019**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai