

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.5102/M/2018
Assessment Year: 2009-10**

M/s. Kolshet Ispat Udyog Ltd., D-1003, Lake Castle, Hiranandani Gardens, Powai, Mumbai – 400 071 PAN: AABCK2831B	Vs.	DCIT, Circle -1, Ashar I.T. Park, 6 th Floor, B Wing, Room No.22, Road No.16Z, Wagle Industrial Estate, Thane (W) – 400 604
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vimal Punmiya, A.R.
Revenue by : Shri R. Bhoopathi, D.R.

Date of Hearing : 18.09.2019

Date of Pronouncement : 22.10.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 26.03.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The assessee has raised two issues in various grounds of appeal, one is against the reopening of assessment under section 147 and the second is on merit against the confirming Rs.17,37,717/- being 12.5% of the bogus purchases to the income of the assessee by Ld. CIT(A).

3. At the time of hearing, the Ld. A.R. did not press the legal issue and the same is dismissed as not pressed. Therefore, we are deciding the issue on merit.

4. The facts in brief are that assessee filed return of income on 27.09.2009 declaring income at nil which was processed under section 143(1) of the Act. Subsequently, the AO received information from Sales Tax Department that assessee is a beneficiary of hawala purchase entries to the tune of Rs.1,39,01,739/- from M/s. S.V. Metal Corporation and accordingly the case of the assessee was reopened by issuing notice under section 148. During the assessment proceedings, the AO called upon the assessee to file evidences to prove the genuineness of the purchases. During the course of assessment proceedings, the assessee filed bills, vouchers, stock statements and proof of payments through banking channel before the AO. However, the AO not finding the contentions of the assessee as tenable estimated the income on bogus purchases at Rs.17,37,717/- being 12.5% of bogus purchases and added the same to the income of the assessee by following the decision of Hon'ble Gujarat High Court in the case of Simit P Seth 38 taxman 385 (Guj).

5. In the appellate proceedings, the Ld. CIT(A) affirmed the order of the AO by following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth 38 taxman 385 (Guj) and accordingly affirmed the decision of the AO.

6. After hearing both the parties and perusing the material on record, we observe that the assessee is undoubtedly the beneficiary of hawala purchase entries to the tune of Rs.1,39,01,739/- from SB Metal Corporation which came to the notice of the AO after the Sales Tax Department, Government of Maharashtra brought the fact to the notice of the AO.

Accordingly, the case of the assessee was reopened. The AO not satisfied with the contentions of the assessee, assessed the profit to tax on the said bogus purchases @ 12.5% and the Ld. CIT(A) affirmed the order of AO by following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth 38 taxman 385 (Guj).

7. Undisputedly, the assessee is engaged in the business of trading in iron and steel goods and the GP in the said industry ranges between 2% to 4%. We observe that in the case of the assessee during the year, the GP rate was 1.27% vis-à-vis 1.07% in the immediately preceding previous year and the applicable VAT rate was 4%. In view of these facts, we are of the considered view that the GP as applied by the AO on the bogus purchases @ 12.5% is quite high and unrealistic in the steel industry. Therefore, it would be reasonable and fair, if a GP rate of 4% is applied on the bogus purchases to bring the profits embedded therein to tax. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to apply a GP of 4% on the bogus purchases over and above the declared gross profit.

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

Order pronounced in the open court on 22.10.2019.

Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 22.10.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.