

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

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.2847/M/2018
Assessment Year: 2010-11**

Mr. Pawankumar Nagraj Mehta, (Proprietor: Rose Metals), 28-30, 1 st Floor, Gajanan Darshan, C.P. Tank, Mumbai - 400004 PAN: AACPM 9957E	Vs.	ACIT 19(2), Room No.207, 2 nd Floor, Matru Mandir, Grant Road, Mumbai - 400007
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Ms. Kusum Bansal, D.R.

Date of Hearing : 27.06.2019
Date of Pronouncement : 17.09.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 26.02.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. At the time of hearing neither assessee nor his authorised representative was present. Therefore, we are deciding the appeal on merit after hearing the Ld. D.R.

3. The only issue raised by the assessee is against the confirmation of addition to the tune of Rs.13,21,573/- equal to 6.5% of the total alleged bogus purchases as against the

addition of Rs.25,41,487/- made by the AO being 25% of the alleged bogus purchases.

4. The facts in brief are that the case of the assessee was reopened under section 147 by issuing notice under section 148 dated 20.10.2014 after the AO received the information from DGIT (Inv.), Mumbai that assessee has entered into hawala bogus purchase transactions from pioneer overseas to the tune of Rs.2,03,31,893/-. Pertinent to state that assessee filed return on 30.09.2010 declaring an income of Rs.30,71,298/- which was processed under section 143(1) of the Act. During the course of assessment proceedings, the assessee filed various evidences in the form of bills, vouchers, delivery challan, proof of transportation, bank statement and note of stock movement. However, the AO, not finding the said evidences as enough for verification of purchases, came to conclusion that purchases remained unverifiable and accordingly rejected the books of accounts under section 145(3) of the Act. Thereafter, by following the decision in the case of CIT vs. Simit P. Sheth (2013) 356 ITR 451 estimated the income on the bogus purchases at Rs.25,41,487/- being 12.5% of the bogus purchases.

5. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by restricting the addition to Rs.13,21,573/- being 6.5% of the alleged bogus purchases of Rs.2,03,31,893/- by observing that the VAT applicable to the assessee is 4% and after adding a margin of 2.5%, applied the percentage of 6.5%.

6. After hearing the Ld. D.R. and perusing the material on record, we observe that in this case the assessee is a dealer in ferrous and non ferrous metal items and undoubtedly availed hawala bogus purchase entries from Pioneer Overseas to the tune of Rs.2,03,31,893/-. The AO applied 12.5% which was restricted to 6.5% by Ld. CIT(A). It is apparent from both the orders passed by the authorities below that they have accepted the fact that income has to be assessed on percentage basis and only differed on the percentage to be applied. Since in the case of the assessee the profit margin is very meager and therefore addition as made by the Ld. CIT(A) at 6.5% seems to be on the higher side. In our opinion, in similar type of cases, the co-ordinate benches of the Tribunal have been taking a consistent view that 2 to 4% has to be applied depending upon the facts of each case in the case of ferrous and non ferrous metals trade. Considering all these facts, in the present case, it would be reasonable, if a rate of 4% is applied to assess the income on bogus purchases. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to apply a rate of 4%.

7. In the result, the appeal of the assessee partly allowed.

Order pronounced in the open court on 17.09.2019.

**Sd/-
(Mahavir Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 17.09.2019.

* 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.