

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

**BEFORE SHRI R.C.SHARMA, AM & SHRI VIKAS AWASTHY, JM**

**ITA No. 6790/Mum/2018  
(Assessment Year: 2009-10)**

Sanjaykumar H Jain, 35, 5 <sup>th</sup> Kumbharwada Lane, Maruti Mandir Marg, Mumbai-400004.	Vs.	I.T.O., Ward-19(2)(4), Mumbai.
<b>PAN/GIR No.AAAPJ 7719 F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	None
Revenue by	Shri Kumar Padmapani Bora (Sr.DR)
<b>Date of Hearing</b>	<b>12/12/2019</b>
<b>Date of Pronouncement</b>	<b>12/12/2019</b>

**आदेश / ORDER**

**PER: R.C. SHARMA, A.M.**

This is the appeal filed by the assessee against the order of the Id. CIT(A)-2, Mumbai dated 01/03/2018 for the A.Y. 2009-10 in the matter of order passed U/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act).

2. At the time of hearing, no body appeared on behalf of the assessee in spite of issue and service of notice, therefore, the Bench decided to dispose off the appeal after hearing the Id. DR as well as considering the material placed on record.

3. We have gone through the orders of the authorities below and found from the record that the assessee is engaged in trading of ferrous

and non-ferrous metals. The assessment was reopened on getting information from the Sales Tax Department regarding the assessee being involved in bogus purchase transactions. After making detailed enquiry, the A.O. added 12.5% of alleged bogus purchases in assessee's income while passing reassessment order U/s 143(3) r.w.s. 147 of the Act. By the impugned order, the Id. CIT(A) confirmed the action of the A.O., against which the assessee is in further appeal before the ITAT.

4. We had gone through the orders of the authorities below and found that the assessee is an individual, engaged in trading activities and the same was conducted under the proprietary firm name and style of M/s Famous Steel. The accounts of the firm were audited u/s 44AB of the Act. During the period, the assessee has made purchases of goods from various parties and sold the same under same condition, there was no manufacturing or processing activity. The quantitative details of such purchases, sales and opening and closing stock alongwith stock register were submitted to the assessing officer. The copies of purchases bills with their respective sales bills in respect of these two suppliers were also submitted alongwith copies of bank statement showing their payment. With respect to issue regarding addition in respect of bogus purchases, the Hon'ble Jurisdictional High Court in the case of Pr.CIT Vs M/s Mohommad Haji Adam & Co. in ITA No. 1004 of 2016 vide its order dated 11/02/2019 have held as under:

“8. *In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assesses additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd.. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-*

*So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6% gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66%. Therefore, considering 5.66% of Rs.3,70,78,125/-which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said*

*question is answered partially in favour of the assessee and partially in favour of the revenue."*

5. The Coordinate Bench of the ITAT, Mumbai in the case of Shri Rameshkumar Daulatraj Vs ITO in ITA No. 4192/Mum/2018 order dated 07/05/2019 after following the above decision of Hon'ble Bombay High Court held as under:

*"9. When these facts were confronted to the learned Sr. DR, he requested for application of reasonable profit rate and according to him the profit rate applied by the AO and confirmed by CIT(A) is quite reasonable in view of the decision of Hon'ble Gujarat High court in the case of Smith P.Seth (supra). We have considered the rival contentions ITA No. 4192/Mum/2018 and are of the view that Hon'ble Bombay High Court in the case of Mohammad Haji Adam & Co. and Ors. (supra) has considered this issue and respectfully following the same, we direct the AO to restrict the profit rate only to the extent of differential percentage as declared on the bogus purchases and as declared on the regular purchases, Hence, we direct the AO accordingly."*

6. It is clear from the above decisions that in case of bogus purchases where sales are accepted, the addition is required to be made only to the extent of difference between the GP declared by the assessee on normal purchases vis a vis bogus purchases. Respectfully following the order of the Hon'ble Jurisdictional High Court and the Coordinate Bench of the ITAT, Mumbai, we restore the matter back to the file of the A.O. to decide the matter afresh to verify the correctness of G.P. calculation so filed by the assessee and to decide the same in terms of Hon'ble Bombay High court decision referred above.

7. In the result, appeal of the assessee is allowed for statistical purposes only.

Order pronounced in the open court on 12<sup>th</sup> December, 2019.

**Sd/-**  
**(VIKAS AWASTHY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(R.C.SHARMA)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 12/12/2019  
\*Ranjan

**Copy of the Order forwarded to :**

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**