

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

BEFORE SHRI R.C.SHARMA, AM

**ITA No.4261/Mum/2018
(Assessment Year:2011-12)**

Shri Nimesh Jabarmal Chandani Ground Floor, Shop No.91-95 Kika Street, Gulalwadi Mumbai – 400 004	Vs.	Income Tax Officer 19(2)(4) Room No.210, Matru Mandir, Tardeo Mumbai – 400 007
PAN/GIR No.ADCPJ2850Q		
(Appellant)	..	(Respondent)

Assessee by	Shri Praful L Vora
Revenue by	Shri Akthar H Ansari
Date of Hearing	07/11/2019
Date of Pronouncement	28/11/2019

आदेश / O R D E R

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

This is an appeal filed by the assessee against the order of CIT(A)-53, Mumbai dated 16/04/2018 for A.Y.2011-12 in the matter of order passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961.

2. In this appeal assessee is aggrieved for reopening of assessment.
3. Rival contentions have been heard and record perused. Facts in brief are that the AO received information from investigation wing about vital information received from Sales Tax Department regarding parties indulging in issuing bogus bills without supply of any material. The assessee was beneficiary of seven such parties from whom purchases of

Rs.65,54,206/- was claimed. After reopening the assessment, AO made enquiries by issuing notices u/s.133(6). However, notices could not be served and were returned back unserved by the postal authorities with remarks "not known" or " no such addresses, left etc". As the assessee was unable to prove the genuineness, AO estimated profit at 12.5% on such bogus purchases and added the same in assessee's income after relying on the decision of Gujarat High Court in the case of Simit P Sheth 356 ITR 451.

4. By the impugned order CIT(A) confirmed the action of the AO after relying on the decision of Gujarat High court in the case of Simit P Sheth. Assessee is in further appeal before him.

5. I have considered rival contentions and carefully gone through the orders of the authorities below. I have also deliberated on the various judicial pronouncements cited by Id. AR during the course of hearing before us. I found that CIT(A) applied the judicial pronouncements of Gujarat High Court in case of Simit P Sheth without considering the percentage of gross profit adopted by the assessee, if it is correct in the line of business i.e. dealer in ferrous and non-ferrous items. In the case of Simith P Sheth, Gujarat High Court has observed that VAT was levied at 10%, extra profit margin of 2.5% was estimated. Thus, total addition

of 12.5% was made. However, in the instant case, it appears that VAT is levied @4%. Thus, it appears that CIT(A) has not properly appreciated facts of the instant case while applying judicial pronouncements in case of Simit P. Sheth. In the substantial interest of justice, I restore the matter back to the file of the CIT(A) for deciding afresh after considering the actual rate of VAT to be levied on the assessee and thereafter, estimate profit margin for such bogus purchases. I direct accordingly.

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

Order pronounced in the open court on 28/11/2019.

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

Mumbai; Dated 28/11/2019
Karuna, Sr. PS

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