

**आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।**

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

श्री महावीर सिंह, न्यायिक सदस्य

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

**आयकर अपील सं./ ITA No. 6883/Mum/2018**

(निर्धारण वर्ष / Assessment Year 2010-11)

Pushpa N Dhanania 24, Saraswati Sadan, 1 <sup>st</sup> Floor, 113, Keshavji Naik Road, Mumba9-400 009	बनाम/ Vs.	The Income Tax Officer Ward 17(2)(5) 506, Aaykar Bhavan, MK Road, Opp. Churchgate Railway Station Mumbai
<b>(अपीलार्थी / Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>
<b>स्थायी लेखा सं./PAN No. ADWPD7778D</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Haresh P. Shah, AR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri Akhtar H. Ansari, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	<b>17.12.2019</b>
घोषणा की तारीख / <b>Date of pronouncement :</b>	<b>17.12.2019</b>

**आदेश / O R D E R**

**महावीर सिंह, न्यायिक सदस्य/**

**PER MAHAVIR SINGH, JM:**

This appeal of the assessee is arising out of the order of Commissioner of Income Tax (Appeals)]-28, Mumbai [in short



CIT(A)], in Appeal No. CIT(A)-28/IT-780/ITO-17(2)(5)/2015-16 order dated 09.10.2018. The Assessment was framed by the Income Tax Officer, Ward-17(2)(5), Mumbai (in short ITO / AO) for the A.Y. 2010-11 vide order dated 09.01.2016, under section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in these appeal of assessee is against the order of CIT(A) confirming the addition made by the AO by applying the profit rate at the rate of 12.5% of the bogus purchase.

3. Briefly stated facts are that the assessee engaged in the business of manufacturing of Trading in Pipe Fittings. The AO received information from DGIT (Investigation), who in turn received information from Sales Tax Department, Mumbai that the assessee has made purchases from hawala parties, as listed in hawala dealers by the Maharashtra Sales Tax Department who are providing bogus bills of purchase amounting to ₹1,55,28,867/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

<i>"Sl No.</i>	<i>Name of party</i>	<i>Amount</i>
1.	<i>Asian Tube Trading</i>	<i>447200</i>
2.	<i>Siddhivinayak Dteel</i>	<i>2360135</i>
3.	<i>Sona Tools Traders</i>	<i>56056</i>
4.	<i>Chanchal Tube Corporation</i>	<i>2250664</i>
5.	<i>Asian Steel</i>	<i>1629784</i>
6.	<i>Surat tube corporation</i>	<i>2390711</i>
7.	<i>Laxmi Trading Co.</i>	<i>39800</i>



8.	Revati Steel Traders	146068
9.	Sagar Steel Traders	1482608
10.	Rupani & Co	1536122
11.	Maruti Steel Traders	1554942
12.	Shiv Industries	1634777
13.	Total	1,55,28,867

4. During the course of assessment proceedings and during appellate proceedings, the assessee submitted all the documentary evidences such as inward register, stock register, payment received against such sales, receipt of material purchases, account payee cheque. According to the AO, the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of unproved purchase at 12.5% of ₹19,41,108/- to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who confirmed the disallowance made by the AO by observing as under: -

*"B2. The Tribunal Mumbai Bench in the case of Vijay C. Kamdar vs. ITO (2009) 120 TTJ (Mumbai) 475: (2008) 8 DTR (Mumbai) (Trib) 47: (2008) 305 ITR 163 (Mumbai) (AT) had an occasion to consider the allowability of deduction under s.80HHC. In that case goods were exported but these were destroyed at high sea at the instruction of exporter. Amount receivable from buyer was*



*neither refunded nor any claim of enforcing delivery received from buyer. Though the proceeds in the books were shown towards sale but such credits were not considered for claim of deduction under s. 80hhC. Hence on the basis of surrounding circumstances and considering the decision of Hon'ble apex court in the case of CIT vs. P. Mohanakala & Ors. (2007) 210 CTR (SC) 20: (2007) 291 ITR 278 (SC). The Tribunal held that Revenue has rightly taxed the receipt. In Arvind M. Kariya vs. ACIT (2013) 153 TTJ 422 (Mum) it was held as follows: Income tax proceedings- Burden of proof- Income tax proceedings are civil proceedings Degree of proof required is by preponderance of probabilities.*

*vi. on aspect of 12.5% GP rate, following is noted:*

*I. Kiran navin Doshi vs. ITO (2017) 49 CCH 20 (Mum)*

*ITA No. 2601/Mum/2016 AY 2009-10 dated 18<sup>th</sup> January 2017*



*II. ITO vs. Shri Harish K. Chandak (ITAT  
Mumbai)*

*ITA Nos 3659, 3578 & 3579/Mum/2015  
Assessment Years: 2010-11, 2009-10 &  
2011-12 dated : 11<sup>th</sup> July, 2017*

*III. Kulubi Steel, Boroda Vs. ACIT [ITAT-  
Ahmedabad]*

*ITA No.1568/Ahd/2008 Asst. Year: 2004-  
05 Decided on: 16.12.2010*

*7.1 The appellant has completely failed  
to discharge onus cost on him. The  
addition is confirmed and grounds are  
rejected.”*

5. I have considered the issue and gone through the facts and circumstances of the case. I find from the facts of the case and argument of both the sides. The CIT(A) has confirmed the profit rate at the rate of 12.5%, which according to me is on higher side going by the nature of business of the assessee i.e. engaged in the business of Pipe Fittings. I am in full agreement with the contentions raised by the assessee before CIT(A) and according to me a profit rate of 12.5% is on higher side because the profit rate cannot be at 12.5%. Even the assessee has also paid the VAT element on these bogus purchases. Hence, I direct the AO to recompute the income after applying profit rate at the



rate of 5% and compute the income accordingly. The appeal of the assessee is partly allowed.

**6. In the result, the appeal of the assessee is partly allowed.**

Order pronounced in the open court on 17.12.2019.

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 17.12.2019

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**