

**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. 6988/Mum/2018**

(निर्धारण वर्ष / Assessment Year 2011-12)

The Income Tax Officer Ward 26(2)(4) Room No. 511, 5 <sup>th</sup> Floor, C- 11, Bandra Kurla Complex, Bandra (East), Mumbai-400 051	<b>बनाम / Vs.</b>	Prime Steel 3-B/26-A, Gafoor Khan Estate, L.B.S. Marg, Kurla (West), Mumbai-400 070
<b>(अपीलार्थी / Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AAIFP1056B</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Akhtar H. Ansari, DR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	None

सुनवाई की तारीख / <b>Date of hearing:</b>	<b>19.12.2019</b>
घोषणा की तारीख / <b>Date of pronouncement :</b>	<b>19.12.2019</b>

**आदेश / O R D E R**

**महावीर सिंह, न्यायिक सदस्य/**

**PER MAHAVIR SINGH, JM:**

This appeal of the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)]-38, Mumbai [in short



CIT(A)], in Appeal No. CIT(A)-38/ITO-26(2)(4)/IT.70/2016-17 order dated 29.06.2018. The Assessment was framed by the Income Tax Officer, Ward-26(2)(4), Mumbai (in short ITO / AO) for the A.Y. 2011-12 vide order dated 28.01.2016, under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) restricting the addition made of the AO by applying the profit rate at the rate of 12.5% of the bogus purchases. For this Revenue has raised following ground: -

*"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the disallowance to 12.5% of the total amount of bogus purchase transaction instead of 100% of the total amount of bogus purchase made by the AO."*

3. Briefly stated facts are that the assessee engaged in the business of reseller in M.S. Sheet, Angle, Channels etc. 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 ₹833212/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -



"SI No.	Name of party	Amount
1.	Sahara Traders	102014
2.	Donnies Trading Pvt. Ltd.	562438
3.	Dharam Trades Private Limited	170560
	Total	833212

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 whole amount as unproved purchases at Rs. 833212/- to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restricted the disallowance at 12.5% of the bogus purchases by observing in para 8.3.2 as under: -

*"8.3.2 The Hon'ble High Courts and Judicial Authorities have adopted estimation of varying percentages to arrive at the profit embedded in such transactions depending upon the nature of business as laid down by the Hon'ble High court of Gujarat in the case of Simit P. Seth reported in 356 ITR 451 and in the case of CIT vs. M/s Bholanath Polyfab Pvt. Ltd (2013) reported in 355 ITR 290. As per the details, submitted by the*



*appellant it is observed that the average gross profit % for assessment years, 2009-10 & 2010-11 and 2012-13 & 2013-14 is 7.4% (7.15+7.25+7.51++7.78) & average net profit ratio for the said assessment year is 4.43% (3.64+4.02+5.19+5.16) wherein the issue of bogus purchase is not there as of now/ till date while the gross profit ratio for the instant assessment year is 6.90% and net profit % is 4.54%. Taking into account of the fact that the gross profit declared in the return filed in the instant assessment year is lesser than the aforesaid average GP% of the two preceding and two subsequent assessment years, the inflation in the purchase price accounted in the books of the appellant as per the inflation in the purchase price accounted in the books of the appellant as per the purchase invoices issued by the alleged suppliers/ parties and the benefit of lower price of purchases made from the grey market due to non-levy of sales tax, excise duty, income-tax and considering the entire material on record, I am of the opinion*



*that estimating the profit embedded in the alleged purchase at 12.5% of alleged total bogus purchases of Rs. 8,33,212/- is justifiable and rational, the appellant being a trader in M/S sheet, angle, channels etc. In arriving at the above decision, support is taken from the filings laid down by the afore referred Hon'ble Judicial Authorities in the light of the facts and circumstances of the present case. The AO is directed to restrict the addition to total income of the appellant on account of disallowance of bogus purchases to ₹ 1,04,152/-. Accordingly, this ground of appeal is partly allowed."*

5. I have considered the issue and gone through the facts and circumstances of the case. I noted the facts from the assessment order and also from CIT(A)'s that the assessee submitted the ledger accounts of the above parties and bank statements extracts evidencing the payments through bank cheque. I noted that facts of this case are similar to the case of Hon'ble High Court of Gujarat in the case of Simit P Seth V CIT (2013) 356 ITR 451(Guj) wherein it had on occasion to deliver its judgment by confirming the decision of the ITAT which has estimated the disallowance at 12.5% of the disputed bogus purchases to meet the end of Justice. Even now before me also revenue could not dislodge the factual aspects noted by CIT(A).



I find that the CIT(A) has rightly applied the profit rate at the rate of 12.5% and I confirm the same. This issue of Revenue's appeal is dismissed.

**6. In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open court on 19.12.2019.

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 19.12.2019

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**