

**आयकर अपीलिय 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. 6987/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	बनाम/ Vs.	Power Hydraulic & Equipments Gala No.16, Crescent Indl. Co- premises Ltd. R.C. Layalika Street, Kherani road, Sakinaka, Mumbai-400 072
<b>(अपीलार्थी / Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AALFP8380M</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 / ORDER**

**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-236/2016-17 order dated 28.06.2018. 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 26.11.2016, 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 16% of the bogus purchase. 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 16% of the total amount of bogus purchases transaction instead of 25% of the total amount of bogus purchased made by the AO."*

3. Briefly stated facts are that the assessee engaged in the business of manufacturing of Hydraulic Equipments & parts. 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 ₹4,164,623/- 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>Vardhman Traders</i>	<i>1,175,720</i>
2.	<i>Radhika Enterprises</i>	<i>39,203</i>
3.	<i>Banjara Enterprises</i>	<i>563,638</i>
4.	<i>Royal Steel Corporation</i>	<i>571,387</i>
5.	<i>A.K. Traders</i>	<i>743,912</i>
6.	<i>Vihol Enterprises</i>	<i>1,070,763</i>



	Total	4,164,623
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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 as unproved purchases at 25% to Rs. 10,41,156/- to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restricted the disallowance at 16% of the bogus purchases by observing in para 8.3.6 as under: -

"8.3.6 .....

*It is observed from the financial statements that GP at 11.86% is declared in the return filed in the instant assessment year. Taking the GP factor alone into consideration, the disallowance made by the AO at 25% of the total alleged bogus purchase is viewed to be on the higher side. Considering the aforesaid GP percentage declared in the return filed in the instant year, the inflation by way of higher price accounted. In the books of the appellant and the cost saving benefits availed in procuring the goods/ materials from the grey market and considering the fact and circumstances of the instant case*



*in totality, and respectfully, following the decision of the Hon'ble Judicial Authorities cited above, entries in the book of the appellant to that effect are rejected and adopting 16% of the total bogus purchases of Rs. 41,64,623/- is considered fair and reasonable. Going by the above profit percentage, 16% of the total alleged bogus purchases, works out to Rs.6,66,340/-. The Assessing Officer is directed to restrict the disallowance of expenses on account of bogus purchase and addition to total income to ₹6,66,340/-. 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 16 % 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