

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. 6993/Mum/2018

(निर्धारण वर्ष / Assessment Year 2011-12)

The Income Tax Officer, Ward 19(2)(3), Room No.218, 2 nd Floor, Matru Mandir, Tardeo, Mumbai-400 007	बनाम / Vs.	Mahavir Pukhraj Chhaged 44, Bhagirathi Bhuvan, 1 st Panjarapole Lane, Mumbai-400 004
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AFHPC4937L		

आयकर अपील सं./ ITA No. 6994/Mum/2018

(निर्धारण वर्ष / Assessment Year 2011-12)

The Income Tax Officer, Ward 19(2)(3), Room No.218, 2 nd Floor, Matru Mandir, Tardeo, Mumbai-400 007	बनाम / Vs.	Mahavir Pukhraj Chhaged Room No.7, 1 st Floor, Bhanji Building, 4 th Kumbharwada Lane, Mumbai-400 004
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAAFM1681R		

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

सुनवाई की तारीख / Date of hearing:	19.12.2019
घोषणा की तारीख / Date of pronouncement :	19.12.2019

**आदेश / ORDER****महावीर सिंह, न्यायिक सदस्य/****PER MAHAVIR SINGH, JM:**

These appeals of the Revenue are arising out of the orders of Commissioner of Income Tax (Appeals)]-54 & 29, Mumbai [in short CIT(A)], in Appeal Nos. CIT(A)-30/IT-924/ITO-19(2)(3)/16-17, CIT(A)-29/IT-279/ITO-19(2)(3)/17-18 even date 27.09.2018. The Assessments were framed by the Income Tax Officer, Ward-19(2)(3), Mumbai (in short ITO / AO) for the A.Y. 2011-12 vide orders dated 11.02.2016 & 24.02.2016, under section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in these appeals of Revenue is against the order of CIT(A) confirming the action made by the AO by applying the profit rate at the rate of 12.5% of the bogus purchases. The facts and circumstances are exactly identical in both these appeals in ITA Nos. 6993 & 6994/Mum/2018 except quantum, hence, we will take the facts from ITA No.6993/Mum/2018 and decide the issue.

3. Briefly stated facts are that the assessee engaged in the business of Iron and steel. 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 ₹62,53,711/- as admitted by



these hawala dealers in their deposition before the authorities.

The same reads as under: -

Sl No.	Name of party	Amount
1.	Ujwal Sales Corporation	11,18,181
2.	Krishna steel Industries	10,66,723
3.	Kanak Metal corporation	10,95,757
4.	Vinayak Sales corporation	12,93,755
5.	Rajeshwari metal Industries	16,79,295
	Total	62,53,711

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 purchases at 12.5% to ₹7,81,714/- 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 as under: -

"7.8 Coming to the addition made, the Hon'ble ITAT, Ahmedabad 'C' Bench in the case of Vijay Proteins Ltd. Vs ACT 58 ITD 0428 held that in similar circumstances, 25% of the purchase price accounted through fictitious invoices has to be disallowed. The goods must have been received from other parties. The likelihood



of the purchase price of these alleged purchases being inflated could not be ruled out and therefore the Hon'ble Nigh Court has upheld the decision of CIT (A) and the ITAT disallowing 25% of the payments made to such parties. The Hon'ble High Court of Gujrat in the case of CIT vs Simit P. Sheth 365 ITR 0451 held that once the sale is accepted by the Assessing Officer, the very basis of purchases could not be questioned. Not the entire purchase price could be disallowed but only the profit element embedded in such purchases could be added to the income of the assessee. The estimation varies with the nature of business and no uniform yardstick could be adoption. The Ld.AO has estimated this profit at 12.5%. As the purchases could not be established as genuine, the estimation made by the Ld.AO of 12.5% of the alleged bogus purchases is confirmed. However, the Ld.AO is directed to allow the GP already declared by the assessee on these alleged bogus purchases. These grounds of appeal are 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. As regards to ITA No. 6994/Mum/2018, the facts and circumstances are same and hence, I confirm the order of CIT(A) in this appeal also.

7. In the result, the appeals of the Revenue are 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