

**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. 6992/Mum/2018**

(निर्धारण वर्ष / Assessment Year 2009-10)

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|---|-----------------------|--|
| The Income Tax Officer<br>Ward 21(1)(3)<br>2&3 Radhe Gopal Ind. Estate,<br>Senapati Bapat Marg,<br>Dadar(W), Mumbai-400 028 | <b>बनाम /<br/>Vs.</b> | Chintamani's NX<br>106, First Floor, Piramal<br>Chambers, Parel, Mumbai-12 |
| <b>(अपीलार्थी / Appellant)</b>  |                       | <b>(प्रत्यर्थी / Respondent)</b>   |
| <b>स्थायी लेखा सं./ PAN No. AADFC1379B</b>  |                       |  |

|  |   |                           |
|--|---|---------------------------|
| अपीलार्थी की ओर से / <b>Appellant by</b>   | : | Shri Akhtar H. Ansari, DR |
| प्रत्यर्थी की ओर से / <b>Respondent by</b> | : | Shri Ramesh K. Chheda, AR |

|   |                   |
|---|-------------------|
| 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)-48, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-48/IT-89/ITO-19(2)(4)/2018-19



order dated 14.08.2018. The Assessment was framed by the Income Tax Officer, Ward-18(2(4), Mumbai (in short ITO / AO) for the A.Y. 2009-10 vide order dated 28.03.2014, 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 of profit rate at the rate of 12.5% as against made by the AO at the rate 25% of the bogus purchases.

3. Briefly stated facts are that the assessee engaged in the business of trading of Readymade Garment. 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 ₹24,38,223/- 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.             | VM Udyog                     | 4,21,777         |
| 2.             | Sagar Enterprises            | 2,40,604         |
| 3.             | GR TRadelink                 | 2,71,424         |
| 4.             | Sharika Corporation          | 2,33,324         |
| 5.             | Shraddha Trading Co.         | 3,08,522         |
| 6.             | Parasnath Enterprises        | 2,72,376         |
| 7.             | Jainam Trade Corporation     | 3,20,580         |
| 8.             | Rajeshwari Trading Pvt. Ltd. | 1,00,880         |
| 9.             | Maa Chamunda Sales           | 2,68,736         |
|                | <i>Total</i>                 | <i>24,38,223</i> |

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. 6,09,556/- to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restricted the disallowance at 12.5% as against made by the AO at the rate 25% of the bogus purchases by observing in para 6 as under: -

*"6. Ground No.1 After non availability of parties in 133(6) inquiry (9 parties) assessee was asked to prove their genuineness by producing them/ filing confirmations. Assessee did not produce anything other than copies of Bills and proof of payments through banking mode. Also quantitative tally of stock was filed. Statement of partner Shri Ashok K. Thakkar was also recorded on 25.03.2014 under section 131/ He stated that goods were received through intermediaries/ Agents and bills were also received through them. Finally it was stated that MVAT liability on behalf of those parties*



*was also paid by assessee. To avoid further litigate, assessee offered to pay 5% of the bogus purchases.*

*AO has brought out full details in the assessment order. AO has brought to tax estimated profit rate of 25% imbedded in unproven purchases of ₹24,38,223/- from 9 parties.*

*After considering the full details/submissions of assessee in appeal as well as in Assessment proceedings, it is seen that in this case even quantitative tally was filed. The fact that assessee did not know parties at all was categorically admitted by the partner in his statement also proof of receipt of goods through delivery challan could not be filed by assessee. Since sales are not disputed, the only issue is estimation of profit embedded. Assessee had offered 5% while AO has estimated it at 25%. In view of overall facts of this case, submissions of assessee and elaborate statement of partner Ashok K. Thakkar, it would be fair and reasonable to estimate such profit for this case (wholly in view of facts of this case) at 12.5%. Hence AO is directed*



*to add 12.5% of bogus purchases of ₹24,38,223/- is pace of 25%. Hence 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