

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “SMC”, MUMBAI
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)
ITA No. 5956 & 5957/Mum/2018(AY : 2011-12 & 2009-10)

Mr Prabhuram V Prajapati 23/25, L.K. Building, 5 th Kumbharwada, Mumbai-400 004 PAN : AIHPP9884E	vs	ITO-19(2)(5), Mumbai
APPELLANT		RESPONDEDNT

Appellant by	None
Respondent by	Shri Akhtar H Ansari
Date of hearing	26-11-2019
Date of pronouncement	04-12-2019

ORDER

Per Pawan Singh, JM :

1. These two appeals filed by the revenue are directed against the common order of the learned CIT(A)-30, Mumbai dated 31-05-2018 for assessment year(AY) 2009-10 & 2011-12. The assessee has raised almost common grounds of appeal for both the years. Therefore, both the appeals were clubbed, heard together and are disposed of by this common order. The appeal for AY 2011-12 is considered as the lead case. The assessee has raised the following grounds of appeal:-

“On the facts and circumstances of the case and in law, the learned CIT (A) erred in ascertaining 12.5% gross profit of Rs. 12,34,832 on alleged purchase of 98,78,661/- to the total income under the Income Tax Act 1961, without considering the facts of the case.”

2. The brief facts of the case are that the assessee, an individual engaged in the business of trading in metals, filed its return of income for the assessment year 2011-12 on 13-09-2011 declaring total income at Rs.4,77,300/-. The return was processed u/s 143(1) of the Income-tax Act, 1961. The assessment was re-opened under section 147 on the basis of information received from Sale Tax Department, Government of Maharashtra that certain hawala operators are indulging in providing accommodation bills without actual delivery of goods. The Sale Tax Department, Government of Maharashtra referred the list of such hawala dealers and the beneficiary to the DGIT (Investigation), Mumbai. The name of assessee appeared in the list of beneficiaries. The assessee allegedly made the purchases of Rs.98,78,661/- from such hawala dealers. On the basis of information, the Assessing Officer made a belief that the income of the assessee escaped assessment, therefore, re-opened the assessment under section 147. Notice under section 148 dated 16-09-2014 was issued to the assessee. The reasons recorded for reopening the assessment was also furnished to the assessee. The Assessing Officer thereafter issued a notices u/s 143(2) and 142(1). During the assessment, the Assessing Officer noted that the assessee has shown purchases from the following parties, which was declared as hawala dealers by the Sale Tax Department, Government of Maharashtra:

	Name of the parties	Bill amount (Rs.)
1	Rahul Steels	26,20,893
2	Monu Metal	8,91,293
3	Mona Metals / Metalex Metal Corporation	7,13,467
4	Parmar Steel (India)	56,44,512
5	Rebhar Enterprises	8,496
	Total	98,78,661/-

3. During the assessment the assessee was asked to substantiate the purchases. The assessee filed its explanation and also furnished evidences relating to the purchases, consisting the ledger statement and the payments through cheque. The explanation filed by the assessee in was not found acceptable to the AO. He observed that the assessee failed to furnish evidence such as, delivery challans, transportation details, etc. to substantiate his claim of purchases from aforesaid parties. Therefore, by relying upon the judgments of Hon'ble Gujarat High Court in the case of CIT vs Simit P Sheth (356 ITR 451(Guj) and in the case of M/s Bholanath Poly Fab P Ltd (355ITR 290), the assessing officer, made addition of 12.5% of the amount of alleged bogus purchases to the total income.
4. On appeal, the Id. CIT(A) confirmed the addition. Aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.

5. None appeared on behalf of the assessee before us, despite service of notice of hearing on the assessee. Therefore, we are left with no alternative but to hear the learned departmental representative (Ld. DR) for the revenue and dispose of the appeal on the basis of material available on record.
6. The Id DR for the revenue supported the order of the lower authorities. The Id DR further submits that the assessee is already granted sufficient relief by the lower authorities and the appeals of the assessee may be dismissed.
7. We have considered the submissions of the Ld. DR for the revenue and perused the material available on record. We find that the assessing officer by relying upon the judgement of the Hon'ble Gujarat High Court in CIT vs Simit P Sheth (supra) and M/s Bholanath Poly Fab P Ltd (supra), has made an addition of 12.5% of the alleged bogus purchases being the profit element embedded in such alleged bogus purchases. The Id CIT(A) confirmed the action of assessing officer with similar observations.
8. We have noted that the lower authorities have not doubted the sales of the assessee. The lower authorities have not examined the gross profit (GP) declared by the assessee during the previous or subsequent assessment years. We are of the considered opinion that under Income

Tax Act only real income can be taxed by the Revenue. We may further conclude that even if the transaction is not verifiable, the only taxable is the taxable income component and not the entire transaction. And after considering the facts of the case and the rival contentions of the parties we are of the opinion that in order to fulfil the gap of revenue leakage the disallowance of reasonable percentage of such purchases would meet the end of justice.

9. Considering the facts the assessee is dealing in trading of metals, wherein the margin of profit is not very much, therefore, considering the business activities of the assessee, we direct the assessing officer to restrict the additions / disallowance on account of the alleged bogus purchase @12.5 % minus GP declared by the assessee. In the result the appeal of the assessee is partly allowed.
10. In the result, appeal of the assessee is partly allowed.

ITA No.5957/Mum/2018 (AY 2009-10)

11. The facts and circumstances in this appeal are identical to the facts and circumstances for the assessment year 2011-12, but for the figures. Therefore, the decision arrived at for assessment year 2011-12, shall apply mutatis mutandis to this appeal also. Accordingly, consistent with our decision for assessment year 2011-12, the appeal filed by the assessee for AY 2009-10 is also partly allowed.

12. In the result, both the appeals filed by the assessee are partly allowed. .

Order pronounced in the open court on 04-12-2019.

Sd/-

Sd/-

(Shamim Yahya)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 4th December, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order
Asstt. Registrar, ITAT, Mumbai