



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

ITA no.7437/Mum./2018  
(Assessment Year : 2009-10)

Income Tax Officer  
Ward-17(2)(1), Mumbai

..... Appellant

v/s

Jitesh F. Jain  
c/o Jain Steel Tube  
301/302, Shanti Garden  
Sector-III, Mira Road  
Thane 401 107 PAN:AAFPJ2084G

..... Respondent

Revenue by : Shri R. Bhupathi  
Assessee by : Shri Jitesh F. Jain

Date of Hearing – 06.01.2020

Date of Order – 15.01.2020

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The captioned appeal has been filed by the Revenue challenging the order dated 25<sup>th</sup> October 2018, passed by the learned Commissioner of Income Tax (Appeals)-57, Mumbai, pertaining to the assessment year 2009-10.

2. The grievance of the Revenue in the present appeal is with the decision of learned Commissioner (Appeals) in restricting the

disallowance on account of non-genuine purchases to 8% as against 12.5% made by the Assessing Officer.

3. Brief facts are, the assessee an individual, carries on business in trading in iron and steel goods. For the assessment year under dispute, the assessee filed his return of income on 30<sup>th</sup> September 2009, declaring total income of ₹ 1,46,830. Initially, the return of income filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 (for short "*the Act*"). Subsequently, on the basis of information received that the assessee is a beneficiary of accommodation bills received from certain hawala operators, the Assessing Officer re-opened the assessment under section 147 of the Act. During the assessment proceedings, on the basis of information received from the DGIT (Inv.), and the Sales Tax Department, Government of Maharashtra, the Assessing Officer called upon the assessee to prove the genuineness of purchases shown of ₹ 85,96,910. As observed by the Assessing Officer, in response, the assessee could only furnish purchase bills, payment details, etc. The assessee neither could produce the concerned parties nor was able to prove the delivery of goods by furnishing transportation receipts and delivery challan. Thus, ultimately, the Assessing Officer concluded that the assessee failed to prove the genuineness of purchase made. Accordingly, he treated such purchases as non-genuine. However, he proceeded to

add the profit element embedded in such purchase by estimating @ 12.5% which worked out to ₹ 10,74,614. The assessee contested the addition before the first appellate authority.

4. Learned Commissioner (Appeals), after considering the submissions of the assessee in the context of facts and material on record, being of the view that the profit rate estimated @ 12.5% by the Assessing Officer is on the higher side reduced it to 8%.

5. We have heard the parties and perused the material on record. Though, it may be a fact that the assessee could not conclusively prove the source of purchase, however, the fact that the assessee had purchased the goods has been accepted by the Assessing Officer that is why he has estimated the profit element @ 12.5% and considered it for addition. However, learned Commissioner (Appeals) has reduced such profit element to 8% of the non-genuine purchases. Therefore, the dispute before us basically hinges upon the profit rate to be considered for addition. After considering the nature of business carried on by the assessee as well as other relevant factors, we are of the opinion that estimation of profit @ 8% of non-genuine purchases as done by learned Commissioner (Appeals) is just and reasonable, hence, does not require any interference from us. Accordingly, grounds are dismissed.

6. In the result, the appeal is dismissed.

Order pronounced in the open Court on 15.01.2020

**Sd/-  
RAJESH KUMAR  
ACCOUNTANT MEMBER**

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 15.01.2020**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai