

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

**ITA No. 56/Mum/2019
(Assessment Year: 2010-11)**

I.T.O.-19(2)(4), Room No. 217, 2 nd Floor, Matru Mandir, Tardeo, Mumbai-400007.	Vs.	Mr. Nemichand K. Shah, 56/64, 1 st Floor, Room No. 2, Naginbhai Gelabhai Jain Trust Bldg., Nanubhai Desai Road, Mumbai-400004.
PAN/GIR No.AAPPS 2838 H		
(Appellant)	..	(Respondent)

Revenue by	Shri Akhtar H Ansari (DR)
Assessee by	None
Date of Hearing	13/01/2020
Date of Pronouncement	13/01/2020

आदेश / O R D E R

PER: R.C. SHARMA, A.M.

This is the appeal filed by the revenue against the order of the Id. CIT(A)-52, Mumbai dated 31/10/2018 for the A.Y. 2010-11 in the matter of order passed U/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act).

2. In this appeal, the revenue is aggrieved by the action of the Id. CIT(A) for confirming the addition to the extent of 12.5% on bogus purchases, less gross profit declared by the assessee.

3. I have gone through the orders of the authorities below and found that in respect of bogus purchases, the A.O. has made addition by

estimating profit @ 12.5%. By the impugned order, the Id. CIT(A) has given further relief of gross profit already declared by the assessee after having the following observation:

“6.7 *From the aforesaid cited decision of Gujarat High Court in the case of Simit P Sheth (supra), it can be observed that the appropriate GP percentage for computing the unaccounted profits from the purchases from the alleged hawala/bogus suppliers should factor the savings of taxes etc. due to the unaccounted sales and the GP already shown in the regular books. It is observed that the ratio of the decision of the Gujarat High Court in the case of Simit P Sheth (supra) cannot be squarely applied to the facts of the case of our assessee since the sales tax rate prevalent in Gujarat was 10% as against only 4% applicable in Maharashtra for the relevant period. However, the facts of the case of the assessee are somewhat similar to that of Ratnagiri Steels (supra). In the case of Ratnagiri Steels (supra), the Hon'ble ITAT after considering the healthy GP shown of 5.45%, directed the AO to allow set off of the book GP against the said rate of 12.5% while computing the additional profits from the purchases from the alleged hawala/bogus suppliers. In the instant case, it is observed that the assessee has shown a GP of 3.15%. Therefore, as was done by the Hon'ble ITAT, Mumbai in the case of Ratnagiri Steel (supra), it will be appropriate if rate of 12.5% is applied for computing the unaccounted profits related to purchases from the hawala/bogus suppliers and against this set off of the GP shown in the regular books in respect of the purchases from the hawala/bogus suppliers is allowed. Accordingly, the AO is directed to compute the additional profits in respect of the purchases from the alleged hawala/bogus suppliers by adopting rate of 12.5%. However, the AO will allow a set off of the GP already shown by the assessee in the regular books in respect of the purchases from the said*

alleged hawala/bogus suppliers. Accordingly, Ground Nos. 3 to 6 of the appeal are partly allowed.”

4. The order passed by the Id. CIT(A) giving further credit of G.P. declared by the assessee is duly supported by the judicial pronouncements and after applying the same to the facts of the case, the Id. CIT(A) has correctly directed to reduce the G.P. of 12.5% by the G.P. rate of 3.5% already shown by the assessee. Nothing was brought on record so as to persuade me to deviate from the findings of the Id. CIT(A). Accordingly, I do not find any reason to interfere in the order of the Id. CIT(A) and uphold the same.

5. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 13th January, 2020.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 13/01/2020

*Ranjan

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai