

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

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

**ITA No.6409 & 6410/MUM/2018  
Assessment Years: 2011-12 & 2010-11**

Rishabh Steel Centre, Mumbai  97/99, Room No.3, Shiv Bldg., Maruti Mandir Marg., 5 <sup>th</sup> Kumbahrwada, Mumbai, Pin-400004.  <b>PAN: AADPJ7645R</b>	Vs.	ACIT-21(1), Mumbai
(Appellant)		(Respondent)

**Present for:**

Appellant by : Pooja Chhawachharia, CA  
Respondent by : Jothilakshmi Nayak, Sr. DR

Date of Hearing : 09.01.2020  
Date of Pronouncement : 29.01.2020

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 22.06.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12 & 2010-11.

2. The only issue raised by the assessee in the various grounds of appeal is against the order of CIT(A) upholding the order of the AO

wherein the AO has made the addition of Rs.10,06,293/- being 12.50% of the alleged bogus purchases.

3. The facts in brief are that the assessee filed his return of income on 16.08.2011 declaring total income of Rs.3,14,670/- which was processed u/s 143(1) of the Act. Thereafter the case of the assessee was reopened u/s 147 by issuing a notice u/s 148 dated 06.11.2014 after recording reasons under section 148(2) of the Act on the ground that income has escaped assessment. The assessee engaged in the business of ferrous and non-ferrous metals. During the course of assessment proceedings, the AO called upon the assessee to prove the genuineness of the purchases to the tune of Rs.80,50,342/- allegedly made from ten hawala parties as brought out by Sales Tax Department, Govt. of Maharashtra. The assessee filed before the AO the copies of bank statements, payments through banking channels, chart showing the details of purchases of the alleged parties and corresponding sales along with bills and vouchers. The AO, however not finding the reply of the assessee satisfactory for the reasons that the assessee could not produce the said parties before the AO besides non-production of transportation receipts. Finally relying on the decision of CIT vs. Simit P. Sheth 356 ITR 451 (Guj.) applied a rate of 12% and thus making an addition of Rs.10,06,293/-.

4. In the appellate proceedings, the ld. CIT(A) dismissed the appeal of the assessee after taking into consideration the contentions and submission of the assessee and held that the addition to be justified in view of the decision of Simit P. Sheth (supra).

5. After hearing both the parties and perusing the material on record, we observe that in this case the undisputed facts are that the assessee was beneficiary of hawala purchases from several parties as

reported by the Sales Tax Department, Govt. of Maharashtra. In this case, we note that the assessee filed copies of bank statements, payments proofs through banking channels beside details of purchases and corresponding sales, bills and vouchers etc , however, the challans and transport bills could not be produced by the assessee. We note that the assessee already declared a margin of 9% approximately. Thus the GP rate applied by the ld. CIT(A) is excessive and unreasonable in view of the nature business of the assessee and GP shown on the purchases including hawala purchases. In the present facts and circumstances, we feel it would be reasonable if we apply GP of 5% to tax the profit element in the alleged bogus purchases. Accordingly we set aside the order of ld. CIT(A) and direct the AO to apply GP rate of 5%.

6. Now coming to ITA No.6410/Mum/2018, the identical issue has been decided in ITA No.6409/Mum/2018 (supra) wherein we have directed the AO to apply a rate of 5% on the bogus purchases. Accordingly, in this case also in ITA No.6410/Mum/2018, the AO is directed to apply GP rate of 5%.

7. In the result, the two appeals of the assessee are partly allowed.

**Order pronounced in the open court on 29.01.2020.**

**Sd/-  
(Saktijit Dey)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 29.01.2020.

RS, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.

		Date	Initial	
WHETHER DICTATION PAD ENCLOSED WITH THE FILE : Yes/No (as the order has been typed with the help of manuscript)				
1.	Draft dictated on			Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS
6.	Date of pronouncement			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			