

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

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

**ITA No.7476/MUM/2018  
Assessment Year: 2011-12**

Mukesh Samrathmal Jain 50, Laxmi Nivas, Minty House, 2 <sup>nd</sup> Panjrapole Lane, C.P Tank, Mumbai, Pin-400004.  <b>PAN: AFHPJ8141B</b>	Vs.	ITO-19(2)(3), Mumbai
(Appellant)		(Respondent)

**Present for:**

Appellant by : Smt. Bhagyashree Jain  
Respondent by : Shri R. Bhoopati, CIT-DR

Date of Hearing : 08.01.2020

Date of Pronouncement : 31.01.2020

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 17.09.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The assessee has challenged the order of the ld. CIT(A) on jurisdiction as well as on merits. We would like to decide the issue first on merits.

3. The only issue raised by the assessee on merits is against the order of CIT(A) confirming the addition as made by the AO @12.5% on the bogus purchases.

4. The facts in brief are that the assessee filed his return of income on 27.09.2011 declaring total income of Rs.2,91,934/- which was processed u/s 143(1) of the Act. Thereafter the AO received information from DGIT (Inv.), Mumbai that the assessee is beneficiary of hawala purchase entries to the tune of Rs.69,81,264/-. The assessee is dealing in ferrous and non-ferrous metals. The assessee filed before the AO the details of purchases and sales and also the details of payments, sales, etc. Besides, the AO issued notices u/s 133(6) on the addresses provided by the assessee, however could not be served and ultimately returned back to the AO. The assessee also filed the quantitative tally in respect of purchases and corresponding sales. The AO however not satisfied with the given details of purchases and by rejecting the books of accounts u/s 145(3) by applied rate of 12.5% on the said bogus purchases by following the decision of CIT vs. Simit P. Sheth 356 ITR 451 and Sanjay Oil Coke Industries v. CIT (2009) 316 ITR 274(Guj).

5. In the appellate proceedings, the ld. CIT(A) confirmed the order of the AO on the ground that the notice issued u/s 133(6) were not served as these suppliers were not found at the addresses given however while holding the order of AO, ld. CIT(A) observed that the assessee might have purchased the goods from grey market thereby earning higher profits.

6. 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 purchase entries. The AO applied

the rate of 12.5% to estimate the profit embedded in the sales which was confirmed by the Id. CIT(A). We observe that in this scenario when the assessee is engaged in the trading of ferrous and non-ferrous metals , the GP rate is very meager ranging from 2 to 4%. In the present circumstances, we are of the considered opinion that it would be reasonable to apply 4% to the said bogus purchases. Accordingly we apply the GP rate @4% as reasonable by setting aside the order of CIT(A) and directing the AO to apply the G.P @4% on bogus purchases.

7. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the open court on 31.01.2020.**

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

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

Mumbai, Dated: 31.01.2020.

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.