

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH
MUMBAI
BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER**

**ITA No. 728 & 729/Mum/2019
(Assessment Year: 2011-12 & 2010-11)**

I.T.O.-19(2)(3), Room No. 218, 2 nd Floor, Matru Mandir, Tardeo, Mumbai-400007.	Vs.	Manav Steel & Engg. Co., 95/2, Parmar House, Maruti Mandir Marg, 5 th Kumbharwada, Mumbai- 400004.
PAN/GIR No. AAGFM 0979 F		
(Appellant)	..	(Respondent)

Revenue by	Shri R.K. Gubgotra (JCIT-DR)
Assessee by	None
Date of Hearing	04/02/2020
Date of Pronouncement	06/02/2020

आदेश / ORDER

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

These are the appeals filed by the revenue against the separate orders of the Id. CIT(A)-07, Mumbai dated 28/11/2018 for the A.Y. 2011-12 and 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 both these appeals, the revenue is aggrieved by the order of the Id. CIT(A) for reducing addition to the extent of 6.5% of alleged bogus purchases, which was made by the A.O. @ 12.5%.

3. I have gone through the orders of the authorities below and found that the assessee is engaged in the trading of ferrous and non-

ferrous metal. On getting information regarding bogus purchases, the A.O. reopened the assessment and thereafter estimated additional income @ 12.5% on alleged bogus purchases and added the same in assessee's income.

4. By the impugned order, the Id. CIT(A) has reduced the addition to the extent of 6.5% after observing as under:

"7.4 It is the contention of the assessee that the CIT(A)-30, Mumbai vide his order No. CIT(A)-30/19(1)(3)/11110/2015-16 dated 15-01-2018 for A.Y. 2009-10 in the assessee's own case has sustained the addition made by the AO up to 6.5% of the alleged bogus purchases. While deciding so, the learned CIT(A) in his aforesaid order No. CIT(A)-30/19(1)(3)/11110/2015-16 dated 15-01-2018 has held as under:

"The appellant made purchases from fifteen parties who are said to be hawala operators, who is indulged in providing bogus bill without supply of any material. Independent Inquiries conducted revealed that no such parties are existing in the given address. When asked to produce the party during the assessment proceedings by the AO, appellant expressed his inability to do so. In the Present case, A.O. estimated the profit percentage on bogus purchases as 12.5%. The simple issue to be detected is whether the percentage adopted by the AO is correct in the line of business i.e. trading in ferrous and non -ferrous metals. As noticed above, in the similar circumstances of bogus purchases, Hon'ble Gujarat High Court estimated the additional advantage towards tax benefit (10% and the profit margin (2.5%) totaling to 12.5%. In the present case on perusal of copies of the invoices furnished by the appellant in the bill the percentage of VAT levied is @4%. Applying the same logic, the profit margin should be adopted @ 2.5%. In view of the above, in my considered opinion, applying the logic of the above said case the profit percentage embedded on such purchases is restricted to 6.5 % (i.e. 4% of VAT levied + 2.5%

towards profit margin), that will meet the ends of the justice. Taking all the facts into consideration and applying the logic of Simit P. Sheth case, the A.O. is directed to restrict the estimation @ 6.5% on the non genuine of Rs. 3,76,35,965/-. Appeal of Ground No. 2, 3 and 4 are treated as 'Partly Allowed'.

7.4.1 *The appellant during the appellate proceedings has relied on a number of case laws including the decision of the Hon'ble ITAT, Mumbai in ITA No. 4408, 4337 & 4409/Mum/2018 dated 05.10.2018 in the case of M/s. Bhansali Metal & Alloys vs. The I.T.O.-19(1)(2), Mumbai wherein the Hon'ble ITAT has restricted the addition in respect of bogus Purchases made on estimation basis and held that the principle of consistency to be followed by the revenue while observing as under:*

"14. However, we note that this is not an appeal by the Revenue. Hence, it will not be appropriate to consider and take away the relief already granted by the id. CIT(A) to the assessee. Further, we also note that the Revenue cannot take different view for same assessee on same facts for different year. Moreover, it is settled law that if two views are possible, one in favour of the assessee has to be adopted. Hence, we uphold the view of the Id. CIT(A) for A.Y. 2010-11 to be applicable in assessee's case for other year also. Hence, we direct that addition be made @ 6.5% of bogus purchase for all the years. We further note that the assessee has referred to various case laws, however in view of the Hon'ble Apex Court and Hon'ble High Court decision referred by us, these are not discussed here. Moreover, the Id. Counsel of the assessee fairly admitted that 6.5% disallowance would meet the end of justice."(emphasis supplied)

7.5 *In view of the above discussed factual matrix and binding precedents and also following the principle of consistency, the CIT(A) in assessee's own case for A.Y. 2009-10 having sustained addition upto 6.5% of the bogus purchases, I am of the view that estimation of 6.5% (4% of VAT levied + 2.5% towards profit margin) as profit embedded in impugned purchases shown from the alleged hawala parties and adding the same to the total income returned, would meet the ends of justice. Therefore, I direct the AO to estimate profit @ 6.5% of the alleged*

bogus purchases, which works out to Rs.6,56,180/- (06.5% of Rs. 1,00,95,071/-) and restrict the addition to Rs.6,56,180/- The appellant gets a relief for the balance amount of Rs. 6,05,704/-."

5. From the record I found that after considering various documents filed before the A.O., the Id. CIT(A) after considering various judicial pronouncements and keeping in view the G.P. rate declared by the assessee, the Id. CIT(A) has restricted the addition to the extent of 6.5%. The detailed finding so recorded by the Id. CIT(A) has not been controverted by the Id DR. Accordingly, I do not find any reason to interfere in the order of the Id. CIT(A) in restricting the addition to the extent of 6/5% of alleged bogus purchases, being profit element in such bogus purchases.

6. Since the facts and circumstances of both the years are same, therefore, by following the reasoning given in the appeal for the A.Y. 2011-12, I also uphold the action of the Id. CIT(A) for the A.Y. 2010-11.

7. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 06th February, 2020.

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

Mumbai; Dated 06/02/2020
*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