

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

**BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER**

**ITA No. 762/Mum/2019  
(Assessment Year: 2011-12)**

I.T.O.-26(2)(2), Building No. C-11, 7 <sup>th</sup> Floor, Room No. 704, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai- 400051.	Vs.	Shri Matiullah Karmullah Khan, M/s Shams Sales Corporation, Room No. 2, Quddus Compound, Opp. M.K. Brothers, Andheri Kurla Road, Jarimari Mumbai- 400072.
<b>PAN/GIR No.AAGPK 7147 J</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri R.K. Gubgotra (JCIT-DR)
Assessee by	None
<b>Date of Hearing</b>	<b>05/02/2020</b>
<b>Date of Pronouncement</b>	<b>06/02/2020</b>

**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)-38, Mumbai dated 19/09/2018 for the A.Y. 2011-12 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 giving further relief to the extent of gross profit declared by

the assessee out of addition of 12.5% made by the A.O. in respect of alleged bogus purchases.

3. I have gone through the orders of the authorities below and found that the assessee is engaged in business of M.S. Scraps and all types of scraps. On getting information from the Sales Tax Department regarding the assessee taking bogus purchase bills, the A.O. reopened the assessment and added 12.5% of alleged bogus purchases in assessee's income.

4. By the impugned order, the Id. CIT(A) has directed to A.O. to give further relief of 4% out of profit declared by the assessee. Precise finding of the Id. CIT(A) was as under:

*"7.4.4 In the present facts and circumstances of the case as sales are not doubted, the case of the AO is that the appellant only took bills from the above parties to explain the purchases accounted in its books of account at higher price to inflate expenses and reduce taxable profit although the material purchase was made from grey/open market at lower prices. In the light of the above facts and circumstances of the case and the judicial pronouncements of various Judicial Authorities on the issue of alleged bogus purchase, I concur with the stand taken by the Assessing Officer that the profit element embedded in the alleged bogus purchases should be brought to tax. Taking into consideration the overall facts and legal provisions applicable to the instant case I am of the opinion that estimating the profit element embedded in the said transactions/ purchases, keeping in mind, the inflated price as per alleged purchase invoices recorded in*

*the books of the appellant and cost benefits availed by the appellant and respectfully following the ratio laid down by the Hon'ble High Court of Gujarat in the case of CIT vs. Simit P.Seth reported in 356 ITR 451 and in the case of CIT vs. M/s. Bholanath Polyfab Pvt. Ltd (2013) reported in 355 ITR 290 an estimate at 12.5% of the total alleged purchases imposed by the AO is considered rational. However, in view of the fact that the appellant offered for tax the profit at NP ratio of 3.92% treated, as 4%, taking support of the maxim laid down by the Hon'ble ITAT, A Bench, Mumbai in its order dated 25.09.2017 in ITA No. 6924, 6504 & 6505/Mum/2014 in the case of Kantilal C Jam, wherein the rate of profit, is taken at 12.5% less net profit declared by the appellant, the profit embedded in the alleged purchases in the present appellant's case is considered justified if computed at 8.5% (12.5% less net 4% stated above) of total alleged bogus purchase of Rs.74,23,398/-. The profit accordingly works out to Rs.6,30,989/-. The AO is directed to restrict the addition to total income to Rs.6,30,989/-. Accordingly, this ground of appeal is partly allowed."*

5. It is clear from the order of the Id. CIT(A) that after considering the facts and circumstances of the case and the judicial pronouncements laid down to this effect by the Hon'ble Gujarat High Court in the case of CIT Vs Simit P Seth 356 ITR 451 & M/s Bholanath Polyfab Pvt. Ltd. (2013) 355 ITR 290 he had given further relief of profit already declared by the assessee out of addition of 12.5% so made by the A.O. The detailed findings so recorded by the Id. CIT(A) has not been controverted by the Id DR by bringing any positive

material on record, therefore, I do not find any reason to interfere in the order of the Id. CIT(A). Hence, I uphold the same.

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

Order pronounced in the open court on 06<sup>th</sup> 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**