

**आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।**

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

श्री सी एन प्रसाद , न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष ।

BEFORE SRI C N PRASAD, JM AND SRI RAJESH KUMAR, AM

**आयकर अपील सं./ ITA No. 1071/Mum/2019**

(निर्धारण वर्ष / Assessment Year 2010-11)

**आयकर अपील सं./ ITA No. 1072/Mum/2019**

(निर्धारण वर्ष / Assessment Year 2011-12)

Shri Bhawarlal Kesharimal Jain Shop No.5, R.K. Wadi Building, 2 <sup>nd</sup> Parsiwada Lane, V.P. Road, Mumbai-400 004	बनाम/ Vs.	The Income Tax Officer Ward-18(3)(1) Mumbai-400 021
<b>(अपीलार्थी / Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AATPJ1678G</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri M.S. Mathuria, AR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri R. Bhoopathi, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	12.02.2020
घोषणा की तारीख / <b>Date of pronouncement:</b>	12.02.2020

**आदेश / ORDER**

राजेश कुमार, लेखा सदस्य /  
PER RAJESH KUMAR, AM:

These appeals by the assessee are arising out of the orders of Commissioner of Income Tax (Appeals)-53, Mumbai in Appeal Nos. CIT(A)-53/IT-285,284/ITO-18(3)(2)/2018-19 even dated 17.12.2018. The Assessments were framed by the Income Tax Officer, Ward-18(3)(2), Mumbai (in short ITO/ AO) for AYs 2010-11, 2011-12 vide dated 19.02.2016 & 30.12.2015, under

section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in these appeals of assessee is against the order of CIT(A) confirming the addition made by AO applying the profit rate at 12.5% of the bogus purchase. For this assessee has raised identically worded grounds in both the years except the quantum. The facts and circumstances are exactly identical in both the years and hence, we will take the facts from AY 2010-11 and will decide the issue.

3. Briefly stated facts are that the assessee engaged in the business of wholeseller/ retailers of stainless steel. The AO received information from DGIT (Investigation), who in turn received information from Sales Tax Department, Mumbai that the assessee has made purchases from hawala parties, as listed in hawala dealers by the Maharashtra Sales Tax Department who are providing bogus bills of purchase amounting to Rs. 1,19,22,216/- for AY 2010-11 and ₹1,55,17,693/- for AY 2011-12 as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

For AY 2010-11

<i>Sl No.</i>	<i>Name of party</i>	<i>Amount</i>
1.	Harshil Ferromet Pvt. Ltd.	1,19,22,216

For AY 2011-12

<i>Sl No.</i>	<i>Name of party</i>	<i>Amount</i>
1.	Harshil Ferromet Pvt. Ltd.	67,38,065

2.	Maruti Impex	18,14,530
3.	Subham Steel Impex	69,65,098
	Total	1,55,17,693

4. The AO issued noticed under section 133(6) to the parties which returned back as unserved and assessee failed to produce these parties. According to information received the name of this party was appearing in the list of hawala entry operators as supplied by sales Tax Department of Maharashtra. The hawala traders admitting before the sales tax authorities in their deposition that they were providing only accommodation purchase bills on commission basis without being actual purchase/ sale of goods. The AO during the course of scrutiny assessment proceedings required the assessee to file the details of purchase. The assessee filed copies of purchase bills from the above said parties, copies of ledger extract and copies of bank statements to prove the payments by cheque. The AO required the assessee to produce these parties for verification but assessee expressed his inability to do so. According to the AO, the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of unproved purchase at 12.5% of ₹14,90,277 for AY 2010-11 and ₹19,39,712/- for AY 2011-12 to the returned income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who confirmed the disallowance of the bogus purchases by observing in para 4.11 by following the decision of Hon'ble Gujarat High court in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj) as under: -

*"4.11. Even if materials have been purchased, they are not purchased form*

*these parties and may be in cash from undisclosed parties. By purchasing from the grey market, the appellant would have benefitted by the savings of taxes. It is noted from Tax Audit Report that quantity accounts are not maintained and the opening and closing stock is valued as certified by the appellant. Therefore, in fact and circumstances of the case, in this particular case, it is considered most appropriate to adopt 12.5% profit which can take care of the rotation of capital utilised for such transaction. Hence in the light of finding of the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth, 12.5% profit is found to be appropriate for ascertainment of taxable income related to such transaction. The assessing officer has made disallowance @ 12.5%. The same is reasonable and is sustained. Thus the Ground of appeal on merits of disallowance is dismissed."*

5. I have heard the rival submissions and perused the facts as placed before us. The undisputed facts are that the assessee is wholesaler/trader in stainless items and is beneficiary of hawala purchase bills of Rs. 1,19,22,216/-. The AO made addition @ 12.50% which was affirmed by Id CIT(A) while sales were not doubted. In our opinion, the bogus purchases

are to be subjected to tax on reasonable rate. Therefore, the rate upheld by Id CIT(A) is not reasonable in view of the nature of trade of the assessee. We further note that the GP for the last three years ranges between 5% to 6%. Keeping in view the profit history of the assessee, we are of view that rate of 4% would be reasonable. Accordingly, we direct the AO to apply 4% on the bogus purchases.

**6. In the result, appeal of the assessee is partly allowed.**

Order pronounced in the open court on 12.02.2020.

Sd/-  
सी एन प्रसाद /C N PRASAD  
(न्यायिक सदस्य/ JM)

Sd/-  
(राजेश कुमार /RAJESH KUMAR)  
(लेखा सदस्य / AM)

मुंबई, दिनांक/ Mumbai, Dated: 12.02.2020

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai