

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

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.1129/M/2019
Assessment Year: 2010-11**

ITO – 29(3)(4), Room No.308, C-10, Prtyakshkar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai - 400050	Vs.	Shri Sashikant B. Gupta, 102, Avior, Nirmal Galaxy, LBS Road, Mulund (W), Mumbai – 400 080 PAN: AADPG4713D
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri R. Bhoopati, Sr. D.R.

Date of Hearing : 11.02.2020

Date of Pronouncement : 18.02.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 04.12.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. During the course of hearing, neither assessee nor his authorized representative appeared to attend the hearing nor any application seeking adjournment was filed. Therefore, we are disposing off the appeal after hearing the Ld. D.R. and going through the facts of the case.

3. The only issue raised by the Revenue is against the order of Ld. CIT(A) restricting the addition to Rs.74,806/- being 6% of

bogus purchases as against the addition of Rs.1,55,850/- being 12.5% of bogus purchases.

4. The facts in brief are that the assessee filed return of income on 15.09.2010 declaring an income of Rs.8,57,300/-. The assessment was framed in this case under section 143(3) of the Act vide order dated 28.03.2013 accepting the returned income. Thereafter the case of the assessee was reopened under section 147 of the Act by issuing notice under section 148 dated 03.09.2013 after AO received information from DGIT (Investigation), Mumbai and Sales Tax Department, Government of Maharashtra that assessee is beneficiary of hawala trade purchases to the tune of Rs.12,46,768/-. Accordingly, the assessee was asked to prove the genuineness of the said purchases. The assessee filed copies of purchase bills, vouchers, ledger accounts, bank statement evidencing payments etc. However, AO was not satisfied with the genuineness of the purchases and brought to tax the said purchases @ 12.5% of the total bogus purchases thereby making an addition of Rs.1,55,850/- to the income of the assessee in the assessment framed under section 143(3) read with section 147 of the Act dated 29.01.2015 by following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Bholanath Poly Fab Pvt. Ltd. ITA No.63 of 2012 dated 23.10.2012 and CIT vs. Simit P. Sheth 356 ITR 451 (Gujarat – HC).

5. Aggrieved, assessee filed an appeal before the Ld. CIT(A) who partly allowed the appeal of the assessee by restricting the addition to 6% instead of 12.5% of the bogus purchases by holding that assessee is trading in iron and steel and it is

reasonable to apply a rate of 6% to tax the profit element in the bogus purchases.

6. After hearing both the parties and perusing the material on record, we note that in this case the assessee is a trader in iron and steel on which the profit rate is there from 2% to 4%. Undisputedly, the assessee is a beneficiary of hawala purchase entries to the tune of Rs.12,46,768/- from three parties who were declared as hawala dealers by the Sales Tax Department, Government of Maharashtra. In the instant case, we observe that Ld. CIT(A) has passed a very reasoned and speaking order by directing the AO to apply 6% which is very reasonable keeping in view the nature of trade of the assessee and therefore we are inclined to uphold the same by dismissing the appeal of the Revenue.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 18.02.2020.

Sd/-
(C.N. Prasad)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated:18.02.2020.

* Kishore, 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.