

**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.1135/M/2019  
Assessment Year: 2011-12**

Shri Omprakash Hukmaram Vishnoi, R.No.29, 4 <sup>th</sup> Floor, 47/51, Kika Street, Gulawadi, Mumbai – 400 004 <b>PAN: AEFV5930D</b>	Vs.	ITO – 19(2)(4), Maatru Mandir, Tardeo, Mumbai - 400007
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Omprakash H. Vishnoi, Owner  
Revenue by : Shri R. Bhoopati, Sr. D.R.

Date of Hearing : 10.02.2020  
Date of Pronouncement : 18.02.2020

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 02.07.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The issue raised in ground No.1 is against the confirmation of addition by Ld. CIT(A) of Rs.3,94,387/- being 12.5% of alleged bogus purchases.

3. The facts in brief are that the assessee filed return of income on 29.09.2011 declaring an income of Rs.4,51,928/- which was processed under section 143(1) of the Act. Thereafter the case of the assessee was reopened under section 147 of the

Act by issuing notice under section 148 dated 22.03.2016 after AO received information from DGIT (Investigation) Wing, Mumbai that assessee is beneficiary of hawala purchases entries to the tune of Rs.31,55,095/- from Kanak Steel Industries. Pertinent to note that assessee is a dealer in ferrous and non ferrous metal items. Accordingly, the AO directed the assessee to prove the genuineness of the said purchases. The assessee, during the course of assessment proceedings, filed copies of bills, vouchers, ledger accounts, bank statement evidencing payments through banking channels and tally of sale and purchase made during the year. The AO, however, was not satisfied with the explanation of the assessee and rejected the books of accounts under section 145(3) of the Act and applied a GP of 12.5% on the said bogus purchases by following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth 356 ITR 451 (Gujarat – HC).

4. In the appellate proceedings, Ld. CIT(A) partly allowed the appeal of the assessee by directing the AO to apply a rate which is calculated by reducing the GP declared by the assessee during the year from 12.5% applied by the AO.

5. In this case, since the assessee is a petty trader dealing in ferrous and non ferrous metal items, the rate applied by the Ld. CIT(A) is excessive and unreasonable and if sustained would lead to hypothetical result. Since the GP in the ferrous and non ferrous is very low and keeping in view of the condition of assessee being a petty scrap dealer the order of Ld. CIT(A) is reversed and AO is directed to apply GP of 2%.

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

**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.