



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

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER &  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA NO.7182/MUM/2018 : A.Y : 2011-12**

**Income Tax Officer – vs. Shri Sujit Ojha  
25(1)(3), Mumbai A-703, Prajakta CHS,  
Kondivita Village  
J.B.Nagar, Andheri-East  
Mumbai – 400 059  
PAN NO: AAEP07127Q**

**Revenue by : Shri Satishchandra Rajore  
Assessee by : None**

**Date of Hearing : 25/02/2020  
Date of Pronouncement : 26/02/2020**

**ORDER**

**PER R.C. SHARMA, ACCOUNTANT MEMBER**

This is an appeal filed by the revenue against the order of CIT(A)-53, Mumbai dated 22/10/2018 for A.Y.2011-12 in the matter of order passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961.

2. Nobody appeared on behalf of the assessee inspite of issuance of service of notice. However, no adjournment petition was filed by the assessee. Accordingly, Bench decided to dispose the appeal after hearing the Id. DR and considering the material placed on record.

3. We have gone through the orders of the authorities below and found from record that assessee is engaged in the business of electrical works contract. AO got information from Sales Tax department regarding

assessee taking accommodation bill with regard to the purchases. Accordingly, assessment was reopened and thereafter, AO added entire such purchases in assessee's income.

4. By the impugned order CIT(A) restricted addition to the extent of 25% after having the following observation:-

*“5.6. I am guided by the ratio of decision of the Hon'ble Gujarat High Court in the case of CIT Vs Simit P. Sheth pronounced on 16.1.2013 in tax appeal No.5531 of 2012 wherein the Hon'ble Court have held that when the total sale is accepted by the AO, then the entire purchases cannot be added to the income of the appellant. The Hon'ble Court have, therefore, held that fair profit ratio would be needed to be added back to the income of the assessee.*

*5.7. Even if materials have been purchased, they are not purchased from these parties and may be in cash from mi-disclosed parties. By purchasing from the grey market, the appellant would have benefitted by the savings of taxes. This is not a case of trading where one to one correspondence between purchase and sales can be shown. Therefore, in fact and circumstances of the case, in this particular case, it is considered most appropriate to adopt 25% 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, 25% profit is found to be appropriate for ascertainment of taxable income related to such transaction. It is noted from TAR that though the appellant is a trader, no stock records are maintained/Also, on identical facts for AY 2010-11 in the case of the appellant, the same AO in similar circumstances, has made a disallowance @ 25% of the purchases and the addition made by the AO was upheld. In AY 2011-12, no distinguishable facts are recorded for making disallowances @ 100% of the impugned purchases. Hence, for AY 2011-12, the disallowance is upheld to the extent of 25%. / The assessee gets relief of Rs.5,59,694/-. Thus **Ground of Appeal No. 2 is partly allowed.**”*

5. It is clear from the order CIT(A) that he has dealt with the issue threadbare and after applying various judicial pronouncements to the facts of the case confirmed addition to the extent of 25% of alleged

bogus purchases so as to fill the gap of loss of revenue if any. The detailed finding so recorded by CIT(A) at para 5.1 to 5.7 has not been controverted by the Id. DR by bringing any positive material on record. Accordingly, we do not find any reason to interfere in the findings of CIT(A) for upholding addition to the extent of 25% of alleged bogus purchases.

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

Order pronounced in the open court on this 26/02/2020

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

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

Mumbai; Dated 26/02/2020  
Karuna Sr.PS

**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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
**ITAT, Mumbai**