

**IN THE INCOME TAX APPELLATE TRIBUNAL “G”  
BENCH, MUMBAI**

**BEFORE SHRI PAWAN SINGH, JM &  
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 6873/Mum/2018  
&

Cross Objection No. 256/Mum/2019  
(निर्धारणवर्ष / Assessment Year: 2009-10)

ITO 17(1)(4), Room No. 115, 1 <sup>st</sup> floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	<b>बनाम/ Vs.</b>	M/s Gandhi & Co. 32/38, Ahmedabad Market, Iron Market, Mumbai-400 009
स्थायीलेखासं./जीआइआरसं./PAN No. AAEEFG6275H		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri V. Vinod Kumar, DR
प्रत्यर्थीकीओरसे/ <b>Respondentby</b>	:	Shri Mehul Shah, AR
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	16.01.2020
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	10.02.2020

आदेश / ORDER

**Per S. Rifaur Rahman, Accountant Member:**

The present appeal as well as cross objection have been filed by the revenue as well as assessee against the order of Ld. Commissioner of Income Tax (Appeals) in short referred as ‘Ld.

CIT(A)', Mumbai, dated 05.05.17 for Assessment Year (in short AY) 2009-10 respectively.

2. Since, the facts raised in the appeal filed by the revenue as well as C.O. filed by the assessee are identical, therefore for the sake of convenience; they are clubbed, heard and disposed of by this consolidated order. First, we are taking ITA No. 6873/Mum/2018 for AY 2009-10 filed by the revenue.

3. The brief facts of the case are that assessee is engaged in the business of trading in Iron & Steel. The return of income for the aforesaid assessment year was filed on 21.09.2009 declaring total income of Rs. 7,28,704/-. Subsequently, the return was processed u/s. 143(1) of the Income Tax Act, 1961 ('the Act). On receipt of the information from the DGIT(Inv.), Mumbai, it came to light that assessee is indulged in hawala transactions. Thereafter, the case of assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act. Notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee. In response, AR of the assessee filed relevant information as called

for. After considering the submission of assessee, AO completed assessment order u/s 143(3) r.w.s. 147 of the Act by making addition @ 12.5% of the bogus purchases.

4. Aggrieved with the above order, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A), after considering the submission of the assessee, had reduced the disallowance 3.75% of the purchase value and partly allowed the appeal of the assessee by relying on various judgments of the Coordinate Bench of ITAT and particularly ITA No. 3227/Mum/2016 in the case of Shri Mehul K. Mehta, Prop. Vaishnavi Enterprises Vrs. ITO, wherein it was held as under:-

*We do not find any infirmity in the well reasoned appellate order of learned CIT(A) which we are inclined to affirm/sustain except that in our considered view , the end of justice will be met in the instant case if GP is estimated to tune, of 12.5% of the purchases from these alleged hawala operators which will cover any leakage of Revenue by way of VAT, commission etc. Thus, as compared to the GP ratio at 7.11% declared by the assesses, we are estimating GP ratio at the rate of 12.5% on the said bogus purchases wherein*

*the assessee will be allowed credit of declared GP ratio of 7.11% and net addition to GP ratio shall be to the tune of 5.39% on bogus purchases, hence, we allow partial relief to the assessee. We order accordingly.*

5. By relying upon the above decision, Ld. CIT(A) came to the conclusion that assessee has already declared 2.97% as GP for this assessment year and after considering the submissions of assessee, he confirmed the disallowance @ 3.75% on accommodation entries.

6. Aggrieved with the above order, revenue has preferred the appeal before us on the ground mentioned herein below:-

*1. "Whether on the facts and circumstances of the case and in law, the Ld. C.I.T. (A) was justified in restricting the addition made by the AO to 3.75% of Rs. 86,52,2637- against the addition made at 12.5% of the bogus purchases, ignoring that the notices u/s 133(6) issued by the Assessing Officer to the alleged supplier, were returned unserved and the assessee was unable to prove the genuineness of the purchases either by producing the suppliers for examination or by*

*furnishing other substantiating documents which were required by the Assessing Officer?"*

2. *"Whether on the facts and circumstances of the case and in law, the Learned CIT(A) erred in overlooking the fact that the addition made by the AO was based on the details of the scam unearthed by the Sales Tax Department, wherein it was established that the assessee has taken mere accommodation entries / bogus bills from the suppliers without actually making purchases from them?"*

3. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary""*

*(This case falls under the exception 10(e) of the Circular No. 03/2018 dated 11.07.2018 as amended on 20.08.2018)*

7. Before us, Ld. DR submitted that assessee has not brought on record any suppliers or any documents in support of the above purchases and AO has already established that these transactions are accommodation entries and considering the fairness, he disallowed 12.5% of the above said bogus purchases. However,

Ld. CIT(A) disallowed 3.75% of the said bogus purchases, which is not proper and he has not clearly brought on record, how he came to that conclusion. Ld. DR supported the order of AO.

8. On the other hand, Ld. AR submitted that assessee has submitted all the facts before Ld. CIT(A) by way of letters dated 12<sup>th</sup> March 2018 and 3<sup>rd</sup> Sept 2018. He relied on the facts which was submitted before Ld. CIT(A) and further relied on the decision of Coordinate Bench of ITAT in the case of Vaishali Prakash Muni Vrs. ITO (ITA No. 378-380/Mum/18). He submitted that in the above said decision, the Coordinate Bench of ITAT has clearly brought on record that the steel industry normally earns GP rate of 4% and they rejected the findings of AO for disallowance of 12.5% of the purchases and finally they were directed the AO to disallow only to the extent of 2% of the alleged bogus purchases. He prayed that in the given case also, the disallowance should be restricted to such percentage.

9. Considered the rival submissions and material placed on record as well as the orders passed by the revenue authorities. We

notice from the records that AO has already established that all these transactions are falling under accommodation entries and AO has already justified the reason for disallowance of 12.5% of the bogus purchases. Further we notice that Ld. CIT(A) heavily relied on the case of Mehul K. Mehta (supra), wherein the Coordinate Bench found that these transactions are bogus and accepted the findings of AO to disallow to 12.5% of the bogus purchases and at the same time, they acknowledge that assessee has already declared GP ratio @ 7.11%. Accordingly, they directed the AO to disallow only to the extent of 5.39%. By relying on the above decision, Ld. CIT(A) had reduced the disallowance to the extent of 3.75%. We notice that assessee has declared GP ratio of only 2.97% and we do not see any reason to deviate from following the decision in the case of Mehul K. Mehta(supra).

10. We notice that Ld. AR relied on the case of Vaishali Prakash Muni Vrs. ITO (supra), in which the Bench has made observation that normally the GP rate works out to 4% and in that case, assessee was dealing in iron steel trading. Whereas in

the given case, assessee is a dealer in various types of iron steel products, therefore we cannot standardize the profits among various types of steel industries. Thus, we are inclined to reject the contentions of Ld. AR. Accordingly, we direct the AO to disallow 9.53% (i.e. 12.5% - 2.97%). Therefore, grounds raised by the revenue are partly allowed.

11. In view of the above appeal, the CO filed by the assessee becomes infructuous and is dismissed.

12. In the net result, the appeal filed by the revenue stands **partly allowed.**

*Order pronounced in the open court on 10<sup>th</sup> Feb, 2020.*

<i>Sd/-</i> (Pawan Singh) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 10.02.2020
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)

4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File  
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आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai