

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

**BEFORE SHRI S. RIFAUR RAHMAN, AM &
SHRI RAM LAL NEGI, JM**

आयकरअपीलसं./ I.T.A. No. 5766/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2010-11)

M/s Kobe Steel (India), 450, Lotwala Building, Pathe Bapurao Marg, Near Sindhi Gally, Mumbai-400 004	बनाम/ Vs.	ITO – 19(2)(2), R. No. 214, 2 nd floor, Matru Mandir, Tardeo Road, Mumbai-400 007.
स्थायीलेखासं./जीआइआरसं./PAN No. AAAPK2456L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Rajiv Khandelwal, AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri C. S. Sharma, DR
सुनवाईकीतारीख/ Date of Hearing	:	26.09.2019
घोषणाकीतारीख / Date of Pronouncement	:	30.09.2019

आदेश / ORDER

Per S. Rifaur Rahman, Accountant Member:

The present Appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) - 29 in short referred as ‘Ld. CIT(A)’, Mumbai, dated 21.08.18 for Assessment Year (in short AY) 2010-11.

2. The brief facts of the case are that assessee has filed its return of income for the A.Y. 2010-11 on 24.09.2010 declaring total income at Rs.3,06,670/-. Subsequently, the AO received information from the Sales Tax Department through the DGIT(Inv.), Mumbai that the assessee had procured bogus purchase bill of Rs.91,02,621/- from Shree Sundha Steels Pvt Ltd.

3. On the basis of this information, the AO re-opened the case by issue of notice u/s. 148 of the I.T. Act. Subsequently, notices u/s. 143(2) and 142(1) were issued alongwith questionnaire and assessment was completed u/s. 143(3) r.w.s.147 on 30.12.2015.

4. During the course of assessment proceedings, in order to prove the genuineness of purchases, the AO asked the assessee to furnish certain details. However, it is seen from details on record that barring the ledger account and cheque payments no other documents such as lorry receipts, transportation details etc. were produced during the course of assessment proceedings. Whatever documents placed on record was not capable of sustenance. The AO had also issued notice u/s. 133(6) to the party but the same

were returned unserved. The assessee also could not produce the parties for examination as called for by the AO. In view of the above, as the above cited purchases and its sources and genuineness remained unexplained, the AO proceeded to disallow the bogus purchases shown by the assessee for an amount of Rs. 11,37, 828/- being 12.5% of the bogus purchases of Rs.91,02,621/- and added to the total income of the assessee.

5. Aggrieved with the above order, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A), after considering the submission of the assessee as well order passed by AO, had sustained the disallowance made by AO @ 12.5%.

6. Aggrieved with the above order, assessee has preferred the appeal before us.

7. At the time of hearing, Ld. AR submitted that assessee is pressing only ground no. 2(a) and not pressing the other grounds. Therefore, with regard to ground no. 2(a), Ld. AR submitted that during this year, assessee has earned gross profit on undisputed

purchase @ 13.71% and assessee has earned gross profit on disputed purchases @ 8.56%. The difference would be 5.16%. Assessee filed the relevant calculation on record and he submitted that on the similar facts and circumstances, Hon'ble ITAT has passed order in ITA No. 4192/Mum/2018 in the case of **Shri Rameshkumar Daulatraj Mehta vrs. ITO**, wherein it was held that as per the Hon'ble Bombay High Court in the case of **PCIT vrs. Mohd. Haji Adam & Co. and Others (ITA No. 1004 of 2016)** has considered this issue and accordingly, Hon'ble ITAT has directed the AO to restrict the profit rate only to the extent of differential percentage as declared on the bogus purchases and as declared on the regular purchases. Accordingly, he prayed that the differential percentage to undisputed purchases should be estimated.

8. On the other hand, Ld. DR relied upon the orders passed by Ld. CIT(A).

9. Considering the rival contentions and material placed on record, we notice that there is no dispute that assessee has

purchased goods from the registered dealers as well as from the alleged unregistered dealers, who are not traceable. However, assessee has brought on record the GP earned from the undisputed purchases and disputed purchases. From the record submitted by the assessee, assessee has already paid the VAT on the disputed purchases. However, Ld. AR submitted that in fact unregistered dealers are not traceable, the liability was fallen to the assessee and in that case, assessee has to pay the relevant VAT to the Government. Considering the submission of assessee, we are inclined to accept the submission of the assessee. Further, we notice that ITAT Mumbai Bench in the case of **Shri Rameshkumar Daulatraj Mehta vs. ITO**, passed in ITA No. 4192/Mum/2018, wherein it was held as under:-

8. In view of the above, the learned Counsel for the assessee referred to the judgement of Hon'ble Bombay High Court in the case of PCIT vs. Mohammad Haji Adam & Co. and Ors. in Income Tax Appeal No. 1004 of 2016 and others, dated 11.02.2019, wherein Hon'ble Bombay High Court has affirmed the findings of the Tribunal wherein the GP rate restricted on the additions limited to the extent of bogus purchases. The

learned Counsel for the assessee referred to the following para 8 of the judgement which read as under: -

“8 In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same

rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. I (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

“ So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66 %. Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour

of the assessee and partially in favour of the revenue.

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order as to costs.”

9. When these facts were confronted to the learned Sr. DR, he requested for application of reasonable profit rate and according to him the profit rate applied by the AO and confirmed by CIT(A) is quite reasonable in view of the decision of Hon'ble Gujarat High court in the case of Smith P. Seth (supra). We have considered the rival contentions and are of the view that Hon'ble Bombay High Court in the case of Mohammad Haji Adam & Co. and Ors. (supra) has considered this issue and respectfully following the same, we direct the AO to restrict the profit rate only to the extent of differential percentage as declared on the bogus purchases and as declared on the regular purchases. Hence, we direct the AO accordingly.

10. Therefore, respectfully following the aforesaid decision as well as considering the facts of the present case, we are inclined to estimate the income @ 5.16%. Accordingly, we direct the AO

to estimate the income of the assessee @ 5.16% of the alleged purchases.

11. In the net result, the appeal filed by the assessee stands **partly allowed.**

Order pronounced in the open court on 30th Sept 2019.

<i>Sd/-</i> (Ram Lal Negi) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 30.09.2019
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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
- आदेशानुसार/ BY ORDER,**

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai