



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

ITA no.994/Mum./2019  
(Assessment Year : 2009-10)

Shri Kantilal Jain  
13/105, Ratansadan  
5<sup>th</sup> Kumbharwada, 2<sup>nd</sup> Pathan Street  
Mumbai 400 004 PAN-ADCPJ9751E

..... Appellant

v/s

Income Tax Officer  
Ward-19(2)(2), Mumbai

..... Respondent

Assessee by : Shri S.L. Jain  
Revenue by : Shri Saurabh Deshpande

Date of Hearing – 06.02.2020

Date of Order – 04.03.2020

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The aforesaid appeal has been filed by the assessee challenging the order dated 26<sup>th</sup> December 2017, passed by the learned Commissioner of Income Tax (Appeals)-53, Mumbai, pertaining to the assessment year 2009-10.

2. The dispute in the present appeal is confined to the addition of ₹ 16,37,933, on account of non-genuine purchases.

3. Brief facts are, the assessee, an individual, is a trader in ferrous and non-ferrous metals. For the assessment year under dispute, the assessee filed return of income on 1<sup>st</sup> August 2009, declaring total income of ₹ 3,69,790. Initially, the return of income filed by the assessee was processed under section 143(1) of the Act. Subsequently, on the basis of information received from the Sales Tax Department, Government of Maharashtra, through the DGIT (Inv.), Mumbai, that the assessee is a beneficiary of accommodation entries provided by certain parties identified as hawala operators, the Assessing Officer re-opened the assessment under section 147 of the Act. In the course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases worth ₹ 1,31,03,467, claimed to have been made during the year from thirteen parties. Though, the assessee furnished certain documentary evidences to prove the purchases, however, the Assessing Officer did not find them acceptable. Therefore, he ultimately concluded that the purchases claimed to have been made are non-genuine. However, following the decision of the Hon'ble Gujarat High Court in CIT v/s Sumit P. Sheth, [2013] 356 ITR 451 (Guj.), he proceeded to add the gross profit embedded in the alleged non-genuine purchase by estimating it at 12.5%. Accordingly, he made an addition of ₹

16,37,933. The assessee challenged the aforesaid addition before the first appellate authority.

4. The learned Commissioner (Appeals), however, confirmed the addition made by the Assessing Officer.

5. The learned Authorised Representative submitted, the profit rate in the nature of business carried on by the assessee is generally in the range of 3% to 4%. He submitted, the assessee in the impugned assessment year has declared gross profit @ above 5%. Thus, he submitted, the gross profit already declared by the assessee should be reduced from the gross profit estimated @ 12.5%.

6. The learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

7. We have considered rival submissions and perused the material on record. Though, the Assessing Officer has treated the purchases as non-genuine, however, ultimately, he has added only the profit element embedded in such purchases by estimating it @ 12.5%. Learned Commissioner (Appeals) has also sustained the aforesaid addition made by the Assessing Officer. After considering the submissions of the assessee, the nature of business and the profit rate

generally involved in such business, we are of the view that the gross profit rate declared by the assessee stated to be at around 5% should be reduced from the profit estimated @ 12.5% and the addition should be restricted to that extent. The Assessing Officer is directed to recompute the addition accordingly. Grounds raised are partly allowed.

8. In the result, appeal is partly allowed.

Order pronounced in the open Court on 04.03.2020

**Sd/-**  
**G. MANJUNATHA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 04.03.2020**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai