

**आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।**

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

श्री महावीर सिंह, उपाध्यक्ष एवं के समक्ष ।  
BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ ITA No. 1408/Mum/2019  
(निर्धारण वर्ष / Assessment Years 2011-12)  
आयकर अपील सं./ ITA No. 1403/Mum/2019  
(निर्धारण वर्ष / Assessment Years 2010-11)

Suresh Mehta HUF C/o Manish Metals, 1002, Tardeo Tower, 75-B, Tardeo Road, Mumbai-400 004	बनाम/ Vs.	The Income Tax Officer Ward 19(3)(4) 2 <sup>nd</sup> Floor Matru Mandir Building, Grant Road, Mumbai-400 007
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAAHM6719E		

अपीलार्थी की ओर से/ Appellant by	:	Shri Naren Kumar Mishra, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Bhora Ram, Sr. DR

सुनवाई की तारीख / Date of hearing:	05.03.2020
घोषणा की तारीख / Date of pronouncement:	01.06.2020

**आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष /

**PER MAHAVIR SINGH, VP:**

These appeals of assessee are arising out of the order of the Commissioner of Income Tax (Appeals)]-29, Mumbai, [in short CIT(A)], in ITA No. CIT(A)-29/IT-215/19(3)(4)/17-18 &



CIT(A)-29/IT-214/19(3)(4)/2017-18 dated 31.01.2019. The assessments were framed by the Income Tax Officer, Wad-19(3)(4), Mumbai (in short ACIT/ITO/ AO) for the A.Ys. 2011-12 & 2010-11 vide even date 23.03.2016 under section 143(3) r.w.s 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in these appeals of assessee is against the order of CIT(A) confirming the addition made by AO off non-genuine and bogus purchases by applying profit rate at the rate of 12.5% of the bogus purchases. For this assessee has raised identically worded grounds in both the years i.e. 2010-11 & 2011-12 except the quantum. The facts and circumstances are exactly identical in both the years and hence, we will take the facts from AY 2010-11 and will decide the issue. The grounds raised in AY 2010-11 reads as under: -

*"2010-11*

*1. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding the assessing officer's action of reopening of the completed assessment u/ 147 of the IT Act 1961 and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.*

*2. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) wrongly erred in sustaining GP @ 12.5% of the alleged bogus*

*purchase as unexplained income and he reasons assigned for doing so are wrong and contrary of the provision of Income Tax and rules made there under."*

3. Briefly stated facts are that the assessee engaged in the business of trading. The AO received information from DGIT (Investigation), who in turn received information from Sales Tax Department, Mumbai that the assessee has made purchases from hawala parties, as listed in hawala dealers by the Maharashtra Sales Tax Department who are providing bogus bills of purchase amounting to ₹ 47,08,701/- for AY 2010-11 and ₹ 1,26,15,175/- for AY 2011-12 as admitted by these hawala dealers in their deposition before the authorities. The same reads as under in both the years respectively: -

In AY 2010-11

S.No	Name of party	Amount
1.	Daksha Enterprises	2,81,167
2.	Raj metal industries	9,77,219
3.	Sweta Enterprises	5,658
4.	Shree Manibhadra Metal Corporation	4,75,622
5.	Gururaj Enterprises	2,04,136
6.	Dev Deep Steel	8,45,861
7.	Veer Industries	10,19,372
8.	Jinkushal Metal Corporation	8,89,807
9.	Leo Impex	9,859
	Total	47,08,701



In AY 2011-12

S.No.	Name of party	Amount
1.	Dev Deep Steel	37,08,555
2.	Jay Vijay Tubes Pvt. Ltd.	13,05,274
3.	Fortune Sales Corporation	11,20,007
4.	Ratan Deep Tubes	25,23,316
5.	Veer Industries	20,60,318
6.	Chambal Steel & Alloys	18,97,705
	Total	1,26,15,175

4. The AO issued noticed under section 133(6) to the parties which returned back with the remark as "left" and assessee failed to produce these parties. During the course of assessment proceedings and during appellate proceedings, the assessee failed to submit documents in respect of evidences such as movement of goods i.e. the transportation bills, delivery challan and weighment slips, etc. But, the assessee filed the details of purchase bills from these parties, evidence of payment through account payee cheque and these goods were recorded in stock register i.e. quantitative tally and also payment received against such sales, receipt of material purchases. According to the AO, the assessee failed to establish the genuineness of the purchase in both the years and accordingly, he made addition of unproved purchase at 12.5% of ₹5,88,588/- for AY 2010-11 & ₹ 15,76,897/- for AY 2011-12 to the returned income of the assessee, respectively. Aggrieved, assessee preferred the appeal before CIT(A), who confirmed the addition made by the AO by observing in para 4.2.4 for AY 2010-11 of his appellate orders as under: -



*“4.2.4 In view of the above, it is an admitted fact Sales Tax Department has conducted search and seizure operation and has established large number of companies/ firms/ partnership concerns as hawala dealers who are engaged in accommodation entries without actually supplying the goods. The appellant is one of the beneficiary and has received such accommodation bills from nine of the hawala operators totaling to ₹47,08,701/-. The A.O. attempted to verify such parties by making independent enquiries under section 133(6) of the I.T. Act, 1961. All these verification letters came with the remark 'Not known/ left'. The onus shifted on the appellant particularly in the background of finding of Sales Tax Department, Mumbai. The appellant filed certain details such as purchase invoices, bank statements etc. However, some of the specific details required to establish the genuineness of purchase such delivery challans, transport receipts, etc could not be submitted before the A.O. Nor the Principle Officer of these concerns were produced before the A.O. for examination.*

*However, it is also a fact that the A.O. has not questioned the total sale component and if there is a sale there should be purchase. The appellant being a trading concern, had indulged in using such accommodation entry. As evident from catena of judgment of bogus purchases, only the benefit derived by using such accommodation entries has to be brought to tax. The advantages from using such bogus bills are in the form of saving VAT, saving of transportation charges and various taxes etc. the Assessing Officer has made addition of 12.5% of bogus purchases. In my opinion, the ratio of the judgment of Hon'ble Gujarat High court in the case of Simit P. Seth 356 ITR 461 (Guj.) is applicable to the facts and disallowance of the appellant's case. Here, the Hon'ble court has held that disallowance of 12.5% of the purchases from such hawala dealers will be justified based on the premise that the appellant have derived benefit to this extent based on his nature of business. Thus, the disallowance of purchase is upheld in principle as the appellant is a trader not manufacture. The Assessing Officer has correctly restricted the disallowance to the extent of 12.5% of purchases from suspicious dealers. The grounds of appeal are therefore dismissed."*



5. I have heard the rival contentions and gone through the facts and circumstances of the case. I noted that neither the AO nor CIT(A) has doubted the sales made by assessee out of these bogus purchase. Further, the assessee has produced all the necessary documents in support of purchased transactions such as purchase invoices, purchase register, sales register, stock register, bank statement evidencing payment made by account payee cheque etc. But it is a fact that the assessee could not produce the transportation evidences or expenditure incurred on account of transportation in regard to these purchases. Hence, I am of the view that a reasonable profit can be estimated because the estimation of profit is on higher side. I noted from the assessment order and the order of CIT(A) that both the authorities lower had admitted assessee have made sales which is not denied out of these purchases. It means that the assessee might have purchases from grey market and also saved VAT. Hence, a reasonable profit on these bogus bills can be estimated. Hence, I estimate the profit on these bogus bills at the rate of 5% and direct the AO to recompute the income accordingly.

6. **In the Result, the appeals of assessee are partly allowed.**

Order pronounced in the open court on 01.06.2020

Sd/-  
(महावीर सिंह /MAHAVIR SINGH)  
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 01.06.2020

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS



**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**