

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. 157/Mum/2019
(निर्धारण वर्ष / Assessment Years 2009-10)

Jupiter Metal 2 nd Floor, Office No. 34, 138, Rayram Bhana Bldg. 3 rd Kumbharwada, Mumbai-400 004 (अपीलार्थी / Appellant)	बनाम/ Vs.	The Commissioner of Income Tax (Appeals)-30 Mumbai (प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAKFM5736F		

अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Akhtar H. Ansari, DR

सुनवाई की तारीख / Date of hearing:	15.06.2020
घोषणा की तारीख / Date of pronouncement:	15.06.2020

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष /
PER MAHAVIR SINGH, VP:

This appeal of assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-30, Mumbai, [in short CIT(A)], in ITA No/Nos. CIT(A)-30/19(2)(1)/1114/15-16 dated 10.08.2018. The assessment was framed by the ITO, Ward 19(2)(1), Mumbai (in short ACIT/ITO/ AO) for the A.Y. 2009-10 vide order dated 02.03.2015 under section 143(3) r.w.s 147 of the Income-tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of assessee is as regards to the order of CIT(A) estimating the gross profit as estimated by Assessing Officer at 12.5% as against the gross profit declared by the assessee at 4.17% and assessee has also raised the issue that the profit rate declared is included in the turnover which is subjected to double taxation. For this, assessee has raised the following ground No. 1 and 2: -

"1. The turnover is subjected to double taxation.

2. The learned CIT(A) erred in law and on facts in estimating GP at 12.5% as against normal gross profit ratio shown by the assessee at 4.17% as declared by the assessee in his return filed with the audit report. The GP Margin in this industry as such is very low."

3. Brief facts are that the assessee is engaged in the business trading of ferrous and non-ferrous metals and runs a partnership concern under the name and style of M/s Jupiter Metal. The Assessing Officer completed the assessment under section 143(3) read with section 147 of the Act vide his order dated 20.03.2015 and made assessment by taking gross profit at the rate of 12.5% of the alleged bogus purchases. The details of bogus purchases as per information received from the office of DGIT vide letter no. F.N. DGIT(Inv.)/Corr.field/2013-14) date 26.12.2013. The following are the details: -



SL No.	Name of parties	Amount
1)	Tripati Metals	45,62,551
2)	Antriksh Metals	58,31,065
3)	Padmavati Steel & Alloys	6,37,324
4)	BPT Tube Corporation	37.755
5)	Rishabh Steel Industries	3,99,999
6)	Minaxi Metal & Alloys	4,00,020
7)	Rajlaxmi Metal & Alloys	5,64,805
8)	Henil Salesagency	5,97,480
9)	Kalash Metals Pvt. Ltd.	17,41,480
10)	Anupam Metal	20,12,613
11)	National Steels	62,38,939
	Total	2,30,24,009

4. From the above, the Assessing Officer noted as per the information received from Sale Tax Department, the assessee has shown purchases of ₹ 2,30,24,009/- during the financial year but the Sales Tax Department found that the above stated concerns were not doing genuine business of purchases and sales but merely providing accommodation bills to various parties including assessee. The Assessing Officer taking into consideration, the information received from Sales Tax Department noted that the assessee has not provided the evidences in respect to transportation of goods and also the parties are not genuine. The Assessing Officer noted that these are bogus purchases. Further, the assessee contended that complete details i.e. ledger accounts, payment by cheque and the goods are entered into stock of the assessee and provided stock statement and entries of the said purchases in the stock register. But the Assessing Officer was of the view that once the assessee could not produce documents like lorry receipts, transport details that means that the movement of goods has not taken place and hence, he observed that no doubt once the goods are entered into stock register, inevitable conclusion is



that the assessee might have purchased the material from grey market or open market from some other parties and saved VAT etc. According to Assessing Officer, the goods purchased from grey market is comparatively cheaper and therefore, relying on the Gujarat High Court decision in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj) computed the profit rate at the rate of 12.5% of the bogus purchase of ₹ 2,30,24,009/-. Thereby, the Assessing Officer added the profit from the above bogus purchases for an amount of ₹28,78,001/-. Aggrieved, assessee preferred the matter before CIT(A).

5. The CIT(A) noted that the Assessing Officer has doubted the genuineness of purchases but not disturbed the sales. He also noted that once lorry receipt and transport details are not available with the assessee, he relying on the decision of Hon'ble Gujarat High Court in the case of Smith P. Seth (supra) confirmed the action of the Assessing Officer in making addition of profit rate at the rate of 12.5% of the bogus purchases. He dismissed the appeal of the assessee vide Para 6.9 and 6.10 as under: -

"6.9 Hon'ble Gujarat High court in the case of CIT vs. Simit Sheth 356 ITR 451 (Guj) found that some of the alleged suppliers of steel to the assessee had not supplied any goods but had only provided sale bills and hence, purchase from the said parties were held to be bogus. The Assessing Officer in that case added the



entire amount of purchase to gross profit of the assessee. Ld CIT(A) having found that the assessee had indeed purchased though not from named parties but other parties from grey market, partially sustained the addition as probably profit of the assessee. The Tribunal however, sustained the addition to the extent of 12.5%. Taking into account the above facts, the Hon'ble Gujarat High Court held that since the purchases were not bogus, but were made from parties other than those mentioned in books of accounts, only the profit element embedded in such purchase could be added to the assessee's income and as such no question of law arose in such estimation."

Aggrieved, now assessee is in appeal before Tribunal.

6. This appeal was fixed for hearing first time on 14.01.2020 on which date none was present from assessee's side. Now, during this Covid time this appeal was again fixed for hearing through the Website of <https://itat.webex.com/webappng/sites/itat/dashboard> by putting a notice at ITAT's Website Notice Board but none was present from the assessee's side. Hence, I am of the view that this being a very small matter which can be disposed off without the representation of the assessee. Hence, qua assessee I am deciding this appeal ex-parte.



7. I heard the learned SR. Departmental Representative, Shri Akhtar H. Ansari, he only relied on the order of the CIT(A) and that of the Assessing Officer. He stated that the purchases are doubtful and not genuine hence, the CIT(A) has rightly applied the profit rate at the rate of 12.5% as decided by the Hon'ble Gujarat High Court in the case of Smith P. Seth (supra). I have gone through the facts in entirety and noted that the assessee could file the details of stock statement, bank statement evidencing in payment of purchases to the above stated parties but the assessee failed to produce the transportation details and could not prove that these purchases are genuine. Moreover, the sales Tax Department has considered these parties as bogus after conducting a detailed enquiry and this issue was also considered by DGIT (Inv.), Mumbai. In view of the above facts and circumstances, I am of the view that the purchases are not genuine but once the sales are accepted by the Revenue authorities, I have no alternative to accept to estimate the purchases as estimated by the lower authorities. I find that the profit rate applied by the Revenue Authorities that Assessing Officer as well as CIT(A) at the rate of 12.5% is on a higher side. For this, I am of the view that the assessee might have saved the VAT as well as there may be some element of purchase of goods at a lower rate from grey market and hence, the reasonable estimation can be made at the rate of 5% in the case of ferrous and non-ferrous metals as the assessee is dealing in the same. Hence, I direct the Assessing Officer to restrict the addition by taking profit rate at the rate of 5%



instead of 12.5% on the bogus purchases. I direct the Assessing Officer accordingly.

8. In the Result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 15.06.2020

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

मुंबई, दिनांक/ Mumbai, Dated: 15.06.2020
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,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai