

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

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजूनाथ जी, लेखा सदस्य के समक्ष ।  
BEFORE SRI MAHAVIR SINGH, VP AND SRI MANJUNATHA G, AM

आयकर अपील सं./ ITA No. 2417/Mum/2019

(निर्धारण वर्ष / Assessment Years 2009-10)

M/s Valsons Metal 110, 1/19/Bharja Bhavan, Kika Street Gulalwadi, Mumbai-400 004	बनाम/ Vs.	<b>The Income Tax Officer</b> Ward 19(3)(5), Mumbai
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAAEFV3006B		

अपीलार्थी की ओर से/ Appellant by	:	Shri Vimal Punmiya, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Akhtar Ansari, DR

सुनवाई की तारीख / Date of hearing:	16.06.2020
घोषणा की तारीख / Date of pronouncement:	16.06.2020

**आदेश / ORDER**

मंजूनाथ जी, लेखा सदस्य/

**PER MANJUNATHA G, AM:**

This appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-29 Mumbai, dated 28.02.2019 and it pertains to Assessment Year 2009-10.

2. The assessee has raised the following grounds of appeal: -

*"On the facts and circumstances of case and law the Ld CIT(A) erred in confirming the assessment order under section 143 sub section 3 r w s 147 of*



*income tax Act which is passed against the principal of natural justice.*

*2. On the facts and circumstances of the case the Id. CIT(A) erred in confirming the additions of Rs.6,78,685/- (being 12.5% of 54,29,486/-) and thereby erred in treating the same as unexplained expenditure in view of section 69C of the Income Tax Act, 1961.*

*3. On the facts and circumstances of the case the Ld CIT(A) erred in confirming and rejecting the books of accounts of the assessee in view of section 145(3) of the Income Tax Act 1961.*

*4. The Ld. CIT(A) erred in confirming the initiation of the penalty proceeding under section 271(1)(c) of the Income Tax Act 1961.*

*5. The Assessee craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.."*

3. The brief facts of the case are that the assessee is engaged in the business of trading in Ferrous and Non-ferrous metal, filed its return of income for AY 2010-11 on 29.09.2009, declaring total income of Rs.59,661/-. The case has been subsequently reopened u/s 147 of the Act, on the basis of information received from DGIT, investigation, Mumbai, as per which, Sales Tax Authorities of Government of Maharashtra had taken actions against number of Hawala dealers, who had



issued bogus purchase bills to various parties in Mumbai and other places. As per list of beneficiaries, the assessee is one of the beneficiary, who had taken accommodation bills of bogus purchases from various parties as listed by the AO in para 5.1 of his assessment order amounting to Rs. 54,29,486/-. The case was selected for scrutiny and the assessment has been completed u/s. 143(3).r.w.s. 147 of the I.T. Act, 1961 on 04/03/2015 and determined total income of Rs. 7,38,350/-, after restricting the addition at the rate of 12.5% towards alleged bogus purchase from those parties and made additions of Rs. 6,78,685/-.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld.CIT(A), the assessee has filed elaborate written submission on the issue, which has been reproduced at Para 3 on page 3 to 10 of Ld.CIT(A) order. The sum and substance of arguments of the assessee before the Ld. CIT(A) are that purchase from the above party is genuine, which is supported by necessary evidences. Therefore, no additions could be made on the basis of information received from third party. The Ld.CIT(A), after considering relevant submission of the assessee and also, by following the decision of Hon'ble Gujarat High Court, in the case of CIT vs. Simith P. Sheth (356 ITR 451), has sustained the addition made by the AO towards alleged bogus purchases to 12.50% gross profit on total purchases from those parties.

5. We have heard both the parties, perused the material available on record and gone through the orders of the



authorities below. We find that the Ld. AO has made 12.5% addition towards alleged bogus purchases on the ground that the assessee is one of the beneficiary of accommodation entries of bogus purchase bills issued by Hawala dealers. According to the Ld. AO, although assessee has filed certain basic evidences, but failed to file further evidence in the backdrop of clear finding by the Sales Tax Department, Maharashtra that those parties are involved in providing accommodation entries without actual delivery of goods. The Ld. AO had also taken support from the investigation conducted during the course of assessment proceedings, as per which notice issued u/s 133(6) to the parties were returned un-served by the postal authorities. Therefore, he came to the conclusion that purchases from the said parties are bogus in nature. It is the contentions of the assessee before the lower authorities that purchases from the above party are supported by necessary evidences. It has furnished all possible evidences, including books of accounts; stock details and bank statement to prove that payment against said purchases have been made through proper banking channels.

6. Having considered arguments of both parties and also, material available on record, we find that both the sides have failed to prove the case in their favour with necessary evidences. Although, assessee has filed certain basic evidences, but failed to file further evidences to conclusively prove purchases to the satisfactions of the Ld.AO. At the same time, the Ld. AO had also failed to take the investigation to a logical conclusion by carrying out necessary enquires, but he solely



relied upon information received from investigation wing, which was further supported by information received from Maharashtra Sales Tax Department. Under these circumstances, it is difficult to accept arguments of both the sides. Further, in a case where purchases are considered to be purchased from suspicious/hawala dealers, various High Courts and Tribunals had considered an identical issue in light of investigation carried out by the Sales Tax Department and held that in case of purchases claims to have made from alleged hawala dealers, only profit element embedded in those purchases needs to be taxed, but not total purchase from those parties. The Hon'ble Gujarat High Court, in the case of CIT vs Simith P.Sheth 356 ITR 451 had considered a similar issue and held that at the time of estimation of profit from alleged bogus purchases no uniform yardsticks could be adopted, but it depends upon facts of each case. The ITAT, Mumbai, in number of cases had considered an identical issue and depending upon facts of each case, directed the Ld. AO to estimate gross profit of 10% to 15% on total alleged bogus purchases. In this case, considering the nature of business of the assessee the Ld. AO has made 12.50% additions, which has been confirmed by the Ld. CIT(A). Although, both authorities have taken uniform rate of profit for estimation of income from alleged bogus purchase, but no one could support said rate of gross profit with necessary evidences or any comparable cases. Further, the ITAT has considered identical issues in assessee own case for subsequent years, where it has directed the Id. AO to restrict addition to 5% profit on total alleged bogus purchases. Therefore, considering



facts and circumstances of this case and consistent with view taken by the Co-ordinate Bench in number of cases, we are of the considered opinion that rate profit adopted @ 12.50% on alleged bogus purchases is on higher side going by the nature of business of the assessee and hence, we order the Assessing Officer to restrict the addition at the rate of 5% on alleged bogus purchases.

**7. In the Result, the appeal of the assessee is partly allowed.**

Order pronounced in the open court on 16.06.2020.

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

Sd/-  
(मंजूनाथ जी/ MANJUNATHA G)  
(लेखा सदस्य / ACCOUNTANT MEMBER)

बई, दिनांक/ Mumbai, Dated: 16.06.2020

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