

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.5917/M/2018
Assessment Year: 2011-12**

Mr. Mukesh H. Sanghvi, 105/106, Gagangiri Tower, 25/29, Dr. Deshmukh Lane, Mumbai – 400 004 PAN: AAGPS 1251H	Vs.	ITO Ward 15(2)(2), Matrumandir, Mumbai – 400 004
(Appellant)		(Respondent)

**ITA No.6281/M/2018
Assessment Year: 2011-12**

ITO Ward 19(2)(3), Room No.218, Income tax office, Matru Mandir, Tardeo Road, Grant Road, Mumbai – 400 007	Vs.	Mr. Mukesh Hirachand Sanghvi, Prop. M/s. Raymond Tubes, 51, Kapol Niwas, Ground Floor, 1 st Carpenter Street, Mumbai – 400 004 PAN: AAGPS 1251H
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Vijay Jaiswal, D.R.

Date of Hearing : 20.10.2020

Date of Pronouncement : 15.12.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The above cross appeals one by the assessee and the other by the Revenue have been preferred against the order dated

13.08.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. At the outset we would like to mention that neither assessee nor his authorized representative appeared at the time when the case was called up for hearing nor any adjournment was filed before us. Hence, after hearing the Ld. D.R. and going through the material on record, we decide this appeal ex-parte.

3. The only effective issue raised by the assessee in its appeal is against the confirmation of addition to the tune of 12.5% of the bogus purchases of Rs. 8,68,04,153/-by CIT(A) as against the addition made by the AO on peak basis of Rs. 6,30,78,306/-.

4. The facts in brief are that the assessee is a dealer in ferrous and non ferrous metal items and during the year filed the return of income on 29.09.2011 declaring income of Rs.16,20,583/- which was processed under section 143(1) of the Act. Thereafter, the case of the assessee was selected under scrutiny after issuing and serving upon the assessee the statutory notices. During the course of assessment proceedings the AO on the basis of information received from Sales Department, Government of Maharashtra noted that assessee has made some bogus accommodation purchase entries from 21 parties as mentioned in page No.2 of the assessment order. The AO in order to verify the genuineness of the purchases also issued notice under section 133(6) which were not served with the remark that "parties not known". Thereafter the AO vide

letter dated 03.02.2014 called upon the assessee to provide the correct addresses so that the genuineness of the purchases could be verified. However, the assessee could not furnish the information called for despite various opportunities granted nor could produce these parties physically. Though the assessee has produced bills, vouchers of the purchases, stock tally and corresponding sales and modes of payment through banking channel before the AO, however, the AO was not convinced with the submissions of the assessee and made the addition of Rs.6,30,78,306/- on peak basis under section 69C of the Act vide order dated 21.03.2014.

5. In the appellate proceedings, the Ld. CIT(A) applied a GP rate of 12.5% on the said bogus purchases by following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth (2013) 356 ITR 451 (Guj) and thus partly allowed the appeal of the assessee.

6. Aggrieved by the order of Ld. CIT(A) the assessee as well as Revenue is in appeal before us.

7. After hearing the Ld. D.R. and perusing the material on record, we observe that in this case the assessee is a dealer in ferrous and non ferrous metal items. Undisputed facts are that the assessee has made bogus purchases from 21 parties the details whereof are given on page 2 of the assessment order. Therefore, the only issue to decide by us is whether the GP rate applied by Ld. CIT(A) is reasonable or not. After considering the facts of the case, we are of the view that in the case of a ferrous

and non ferrous items the profit is very meager ranging from 2% to 4 % and GP rate as directed by the Ld. CIT(A) appears to be excessive and unreasonable. The co-ordinate benches of the Tribunal have been taking a consistent view that in such type of cases having trade of ferrous and non ferrous steel items ,the profit GP can not exceed 3 to 4%. Though the Ld. CIT(A) has correctly followed the Hon'ble Gujarat High Court decision in the case of CIT vs. Simit P. Sheth (supra), however, the rate applied is on the higher side. We are, therefore, of the view that it would be reasonable if the GP rate @ 5% is applied on the said bogus purchases to bring the additional income on bogus purchases to tax which the assessee may have made by purchasing the goods from grey market. Accordingly, we direct the AO to apply a GP of 4% and the order of Ld. CIT(A) is modified to that extent. The appeal of the assessee is partly allowed.

8. Since we have partly allowed the appeal of the assessee, the cross appeal by the Revenue becomes infructuous and is accordingly dismissed.

9. In the result, the appeal of the assessee is partly allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 15.12.2020.

**Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 15.12.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.