

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.6063/M/2019
Assessment Year: 2009-10**

ITO 31(2)(1), Room No.615, 6 th Floor, Kautalya Bhavan, BKC, Bandra (E), Mumbai – 51	Vs.	Shri Inamullah H Choudhary, (Prop. of Amir Steel Corp.) Opp Garuda Petrol Pump, Ganesh Nagar, Link Rd., Charkop, Kandivili (W), Mumbai – 67 PAN: AFTPC6795A
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Ms. Smita Verma, D.R.

Date of Hearing : 24.06.2021
Date of Pronouncement : 02.07.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 03.05.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. At the time of hearing when the case was called for hearing, neither assessee nor his authorized representative appeared before us to attend the case nor any adjournment application was filed seeking adjournment. Therefore we are deciding the

appeal of the revenue after hearing the ld DR and after taking into account the merits of the case.

2. The only issue raised in the various grounds of appeal by the Revenue is against the order of Ld. CIT(A) restricting the addition to 12.5% as against the addition made by the AO @25% on the bogus purchases of Rs.42,74,801/-.

3. The facts in brief are that the assessee filed the return of income on 30.09.2009 declaring an income of Rs.3,68,904/- which was processed under section 143(1) of the Act. Thereafter, the case of the assessee was reopened under section 147 of the Act by issuing notice under section 148 of the Act dated 13.03.2014 after the AO received the information from DGIT(Inv.), Mumbai and Sales Tax Department that assessee is beneficiary of hawala purchase accommodation entries from 13 parties to the tune of Rs.42,74,801/-. The statutory notices were duly issued and served upon the assessee. The assessee is engaged in the business of trading and installation of electrical items, motor engineering items and services thereof. During the course of assessment proceedings the AO called upon the assessee to prove the genuineness of these purchases. The AO also issued notice under section 133(6) of the Act dated 22.09.2014 which was returned unserved. The assessee in response to notice under section 142(1) of the Act filed before the AO the copies of bills, vouchers, delivery challans in case of a few suppliers and also bank statements highlighting the payments. The AO also required the assessee to produce these parties in person, however, the same could not be done by the assessee. Finally, the AO after following the decision of Hon'ble

Gujarat High Court in the case of CIT vs. Simit P. Sheth (2013) 38 taxmann.com 385 (Guj) came to conclusion that such type of purchases are normally made to save the profit margin and accordingly applied a profit margin of 25% on the bogus purchases in order to tax the profit element embedded therein thereby making an addition of Rs.10,68,700/- in the assessment framed under section 143(3) read with section 147 of the Act dated 10.03.2015.

4. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by directing the AO to apply a profit margin of 12.5% on the bogus purchases as the GP applied by the AO of 25% is highly expensive and unreasonable by following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth (supra) by holding that in view of the investigation carried out by the Sales Tax Department and also the fact of non service of notices issued under section 133(6) of the Act, it is undoubtedly proved that assessee has indulged in making bogus purchases.

5. After hearing both the parties and perusing the material on record, we observe that undisputedly the assessee is beneficiary of hawala purchase entries to the tune of Rs. 42,74,801/-. We note that the assessee has made the payments by banking channel and also placed before the authorities below the copies of bills, vouchers, delivery challans etc. After perusing the appellate order we observe that the Ld CIT(A) has passed a very reasoned order by considering the decision of CIT vs. Simit P. Sheth (supra). The coordinate benches of the tribunal have been taking consistent view of applying GP rate on the alleged bogus

purchases to bring to tax the profit embedded in such bogus purchases varying from 2% to 12.5% depending on the facts of the case. In the instant case the Ld. CIT(A) has directed the AO to apply 12.5% of the bogus purchases which is reasonable and justified and consequently we do not find any reason to interfere in the findings of the Ld. CIT(A). Accordingly, we are upholding the order of Ld. CIT(A) by dismissing the appeal of the Revenue.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 02.07.2021.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

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

Mumbai, Dated: 02.07.2021.

* 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.