

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

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT**

**ITA NO. 1287/MUM/2020** : **A.Y : 2009-10**

Shantilal J. Sanghavi  
Prop of M/s. Suresh Steel Centre  
1<sup>st</sup> floor, 101, Kika Street, Shop No.  
4, 128/130, Panjrapol Road,  
Mumbai 400 004. (Appellant)  
**PAN : AQNPS6168C**

Vs. Income Tax Officer – 17(3)(3),  
Mumbai. (Respondent)

**Appellant by** : **Shri Dhaval Shah**  
**Respondent by** : **Shri Vaibhav**  
**Date of Hearing** : **25/10/2021**  
**Date of Pronouncement** : **25/10/2021**

**ORDER**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-28, Mumbai (in short 'CIT(A)') in Appeal No. CIT(A)-28/IT-379/ITO-17(3)(3)/2015-16 dated 26.05.2016. The assessment was framed by Income Tax Officer - 17(3)(3), Mumbai for Assessment Year 2009-10 vide his order dated 27.02.2015 under Section 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The only issue in this appeal of the assessee is against the order of CIT(A) restricting the profit rate at 15% of the bogus purchases minus gross profit already declared. For this, assessee has raised following ground no. 1 :-

*“1. The Learned Assessing Officer has erred in making addition of Rs.24,64,027/- by disallowing on account of Non genuine purchases without considering submission made by appellant.”*

3. Brief facts are that the Assessing Officer during the course of assessment proceedings received information from DGIT (Inv.), who in turn received information from Maharashtra Sales Tax Department that some of the parties are indulging in providing accommodation entries in the form of issuing bogus sale bills/tax invoices, but not supplying goods physically. These were treated as Hawala dealers under Maharashtra VAT Act. Assessee is one such beneficiary and has obtained bogus bills as under :-

<i>Sr.No.</i>	<i>Hawala Name</i>	<i>Amount (in Rs.)</i>
<i>1</i>	<i>Rishabh Enterprises</i>	<i>12,09,393</i>
<i>2</i>	<i>New Era Enterprises</i>	<i>12,09,634</i>
<i>Total</i>		<i>Rs.24,64,027/-</i>

The Assessing Officer treated these purchases as bogus and added to the returned income of the assessee. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) restricted the profit rate to 10.12% i.e. 15% of the purchases minus the gross profit of 4.88%. For this, CIT(A) observed in paragraph 5.9 as under :-

*“5.9 In the instant case, the appellant is not in a position to prove the existence of the supplier. The fact that the alleged purchases have been paid for entirely in cash read with the fact that the purported purchasers are now not available for confirmation of the transactions, is telling and casts a strong doubt on the veracity of the transactions. The AO has disallowed the entire bogus purchases of Rs.2464027. Before me the AR of the appellant had stated that the AO has disallowed Rs.24.64 lakhs out of the total purchase during the year of Rs.92.17 lakhs. He also stated that in A.Y 2010-11 & 2011-12, the AO has restricted the disallowance to 10% of the unverifiable*

*purchases. I also find that the AO has not doubted the sales made. Obviously sales could not have been made if there were no purchases. I find that the appellant has already recorded GP of 4.88% during the year. On a conspectus of facts, I am of the opinion that the profit element on the bogus purchase could be restricted to 15% of the purchase of Rs.2464027 and at the same time, the credit for the GP already recorded in the books should be allowed to the appellant. Thus the disallowance made by the AO should be restricted to 10.12% (15% - 4.88% GP recorded in the books) of the bogus purchases. I therefore direct the AO to estimate the disallowance by adopting 10.12% of Rs.2464027. The disallowance made by the AO is restricted to a sum of Rs.2,49,360. Ground no. 1 is partly allowed."*

Aggrieved, assessee came in appeal before the Tribunal.

4. I have heard the rival contentions and gone through the facts and circumstances of the case. The admitted facts are that the assessee has produced sale bills, purchase bills, proof regarding payment to these parties through account payee cheques and also produced the stock register, ledger account etc. However, the assessee could not produce the delivery challans, transportation receipts, octroi receipts for payment of octroi duty, receipt of weighment bridge for weighment of the goods, excise gatepass and goods inward register, etc. The assessee also could not produce the parties for examination. It means that the assessee is unable to discharge the complete onus. However, the Assessing Officer has also not doubted the sales made out of these purchases, which is corroborated by the stock register. I noted that the assessee is engaged in the business of ferrous and non-ferrous metals, iron and steel. The assessee might have made the purchases from grey market at a lower price and obtained bogus bills just to support these purchases and, in that event, he might have saved VAT. Hence, the presumption is that although the purchase bills have been obtained, but the purchases have been made.

Hence, the element of profit can be added to the income of the assessee. In the trade of iron and steel, the profit rate or savings on account of VAT is to the extent of 4-5%. Accordingly, I estimate the profit rate at 5% of the bogus purchases and direct the Assessing Officer accordingly.

5. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 25<sup>th</sup> October, 2021.

Sd/-  
(MAHAVIR SINGH)  
VICE PRESIDENT

Mumbai, Date : 25<sup>th</sup> October, 2021

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar/Sr. PS  
I.T.A.T, Mumbai