

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

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

ITA NO. 1061/MUM/2020 : **A.Y : 2011-12**

Sunil Amarchand Varma
A-504, Keshav Shrushti, Opp. Hotel
Green, Link Road, Chincholi Bunder,
Malad (W), Mumbai 400 064.

Vs. Income Tax Officer – 17(3)(4),
Mumbai. (Respondent)

PAN : AAEPV7740A (Appellant)

Appellant by : **Shri Ketan Vajani**

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/ITBA-10410/ITO-17(3)(4)/2016-17 dated 13.11.2019. The assessment was framed by Income Tax Officer - 17(3)(4), Mumbai for Assessment Year 2011-12 vide his order dated 31.05.2016 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 assessee is against the order of CIT(A) restricting the profit rate to 12.5% of the alleged bogus purchase as made by the Assessing Officer. For this, assessee has raised many grounds, but the effective grounds are Ground nos. 1 and 2, which read as under :-

“1. On the facts and in the circumstances of the case, the Commissioner of Income-tax (Appeals) hereinafter referred to as the “CIT(A)”, has erred in confirming the addition at Rs.15,60,527/-, being 12.5% of the alleged bogus purchases as made by the assessing officer.

2. The CIT(A) has erred in confirming the addition to the extent of Rs.15,60,527/- merely on conjectures, surmises and suspicions. The addition has been confirmed on perverse findings and without appreciating the relevant facts of the case of the appellant.”

3. Brief facts are that the Assessing Officer received information from the DGIT (Inv.), Mumbai that assessee is one of the beneficiaries having obtained bogus purchase bills from the hawala parties. During the financial year 2010-11, assessee has obtained bills from the following parties for an amount of Rs.1,24,04,219/- :-

<i>Name of the party</i>	<i>TIN</i>	<i>PAN</i>	<i>Amount</i>
<i>Shraddha Trading Co</i>	<i>27460624763V</i>	<i>AOTPM8042B</i>	<i>55,51,290</i>
<i>Saj Enterprises</i>	<i>27960705192V</i>	<i>AIDPJ5071B</i>	<i>58,31,108</i>
<i>A.K. Traders</i>	<i>27920801535V</i>	<i>ADIPN3386K</i>	<i>10,21,821</i>
<i>Total</i>			<i>1,24,04,219</i>

The Assessing Officer noted that these hawala parties are providing accommodation entries by providing bills only and these parties are mostly engaged in the following activities :-

- “a) issuing only bills and doing non-genuine business (Hawala Business)*
- b) not maintaining stock and not keeping stork Register*
- c) not effecting any purchase; and*
- d) there was no transaction of goods*
- e) entries were being provided by the parties for commission.”*

The Assessing Officer noted that the assessee has submitted the purchase bills and corresponding sale bills and the amount is also paid through account payee cheques and the amount is also received from sale parties through account payee cheques. The Assessing Officer also noted that Assessee has furnished statement reflecting the purchase of items, corresponding sales, purchase/sale bills, bank statements evidencing payments in support of the claim that the said purchases from the alleged parties are genuine and also stock register, but assessee could neither provide the delivery challans and transportation receipts nor could produce these parties for examination. Hence, the Assessing Officer treated these purchases as bogus and estimated suppressed profit at 12.5% of the non-genuine purchases, thereby he made an addition of suppressed income from unproved purchases at Rs.15,50,525/-. Aggrieved, assessee preferred appeal before the CIT(A) who confirmed the addition. 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. I noted that the assessee is engaged in trading of iron and steel. Admitted facts are that assessee has obtained bogus purchase bills from aforesaid parties. There is no dispute about the quantity of bills and quantum of amount. Admitted facts are that assessee has furnished all evidences reflecting the purchase of items and the corresponding sales, purchase/sale bills, bank statements evidencing payments in support of claim that the said purchases from the alleged parties are genuine and also the stock register, but the assessee could not provide the delivery challans, transportation receipts and parties for examination before the Assessing Officer. The assessee is engaged in trading of iron and steel and profit rate in that trade is not at 12.5%, but around 4-5%. Even the VAT on it is 5%. It is also

a fact that the Assessing Officer has not doubted the sales made out of the above bogus purchases. Presumption is that once the assessee has obtained bills and sales are not doubted by the Assessing Officer, it can be stated that assessee might have made purchases from grey market at a lower price and might have saved VAT. Hence, a reasonable profit can be estimated on the same. Similar view is taken by the Hon'ble Gujarat High Court in the case of *CIT vs. Simit P. Sheth, 356 ITR 451 (Guj.)* wherein the Hon'ble Gujarat High Court has confirmed estimation of profit rate at 12.5%, but in another business, not in iron and steel. Hence, I estimate the profit rate at 5% instead of 12.5% estimated by the Assessing Officer and confirmed by the CIT(A).

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

Order pronounced in the open court on 25th October, 2021.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai, Date : 25th October, 2021

SSL

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