

**आयकर अपीलीय अधिकरण “SMC” न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ ITA No. 4414/Mum/2019

(निर्धारण वर्ष / Assessment Year 2010-11)

M/s. Siddharth Structurals 307, Gala Commercial Complex, Dr. Dindayal Upadhyay Marg, Mulund (West), Mumbai-400 080	Vs.	The Income Tax Officer Ward-29(3)(4), 205, C-10, Bandra Kurla Complex, Pratyakshakar Bhavan, BKC, Bandra (E)-400 051
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. ABKFS5656B</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Ms. Radha Halble, AR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri V.K. Chaturvedi, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	07.10.2021
घोषणा की तारीख / <b>Date of pronouncement :</b>	07.10.2021

**आदेश / ORDER**

**महावीर सिंह, उपाध्यक्ष के द्वारा /**  
**PER MAHAVIR SINGH, VP:**

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-33, Mumbai [in short CIT(A)], in appeal No. CIT(A)-33/Rg.21/113/2015-16 vide dated 28.08.2017. The Assessment was framed by the Income Tax Officer, Ward-21(3)(3) Mumbai (in short ITO/ AO) for the A.Y. 2009-10 vide order dated 09.03.2015 under section 143(3) read with section 263 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) in confirmed the addition made by the Assessing Officer by applying profit rate at the rate of 12.5% of the alleged bogus. For this assessee has raised the following ground:-



“3. In facts and in the circumstances of the case and in law, the learned CIT(A)-40, Mumbai has erred in upholding the adhoc addition of rs.10,68,861/- being 12.5% of alleged bogus purchases of ₹85,50,886/-, merely on surmises and conjectures.”

3. Briefly stated facts are that the assessee engaged in the business of trading and whole selling of Iron and steel. The AO received information from DGIT (Investigation), who in turn received information from Sales Tax Department, Mumbai that the assessee has made purchases from hawala parties, as listed by the Maharashtra Sales Tax Department who are providing bogus bills of purchase, including assessee amounting to Rs. 85,50,886/-, as admitted by these hawala dealers in their deposition before the authorities. The bogus bill obtained by assessee are as under: -

Name of party	Amount
Parshva & Co	13,14,641
Renuka Sales corporation	3,31,425
Rekha Trading Co	13,17,833
Shyam Corporation	3,01,546
Daksha Enterprises	6,20,591
Amar Enterprises	6,94,865
Mercury Enterprises	3,30,850
Prayosha Trading Co	6,42,303
Shraddha Trading Co	7,17,450
MR corporation	22,79,382
Total	85,50,886

4. During the course of assessment proceedings and during appellate proceedings, the assessee submitted all the documentary evidences such as Tax invoice purchases, bank statement highlighting the payments made to so called hawalla parties, the statement showing details of hawala purchases and



corresponding payments, the statements showing details of purchases and its corresponding sales. According to the AO, the assessee failed to establish the genuineness of the purchase in absence of delivery challans, octroi receipt and transport receipt of the purchases and accordingly, he made addition of unproved purchase at 12.5% of ₹ 10,68,861/- to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who confirmed the disallowance made by the Assessing Officer by observing as under: -

*“4. Decision: I have gone through the reasons recorded by the AO and the submission made by the appellant.*

*The Ld. AO made an addition of Rs.10,68,861/- on account of gross profit estimated at 12.5% on the sales made by the appellant out of alleged bogus purchases made from hawala parties amounting to Rs.85,50,886/- from the following parties enlisted as under:*

<i>Name of party</i>	<i>Amount</i>
<i>Parshva &amp; Co</i>	<i>13,14,641</i>
<i>Renuka Sales corporation</i>	<i>3,31,425</i>
<i>Rekha Trading Co</i>	<i>13,17,833</i>
<i>Shyam Corporation</i>	<i>3,01,546</i>
<i>Daksha Enterprises</i>	<i>6,20,591</i>
<i>Amar Enterprises</i>	<i>6,94,865</i>
<i>Mercury Enterprises</i>	<i>3,30,850</i>
<i>Prayosha Trading Co</i>	<i>6,42,303</i>
<i>Shraddha Trading Co</i>	<i>7,17,450</i>
<i>MR corporation</i>	<i>22,79,382</i>
<i>Total</i>	<i>85,50,886</i>

*The Ld. AO on receipt of information from the Sales Tax Department and DGIT(Inv.), Mumbai, that the appellant, M/s. Siddharth Structuralis made bogus / non-genuine purchases to the tune of Rs,85,50,886/- from the parties mentioned above.*



*The Ld.AO issued notices u/s. 133(6) to the above parties but the same have been returned 'unserved' by the postal authorities, The AR of the appellant, during the course of appellate proceedings could not furnish the details of the parties as well as produce before the Ld.AO for examination, thus, the Ld.AO held the above parties as bogus and estimated the profit at 12.5% being the profit embedded in the corresponding sales out of the bogus purchases based on the above judicial precedence of Hon'ble Gujarat High Court in Simit P. Seth and also in the case of Bholanath Poly Fab (P) Ltd. and hence the decision of the Ld. AO is hereby confirmed and the reliance placed on case laws by the AR of the appellant are not particularly relevant and are distinguishable to the facts of the case. In the result, the appeal filed by the appellant is Dismissed confirming the addition made by the Ld. AO."*

Aggrieved, assessee is in appeal before me.

5. I find that this issue is squarely covered in assessee's own case for earlier Assessment Years i.e. Assessment Year 2009-10 in ITA No. 1607/Mum/2017 order dated 05.12.2017, wherein Tribunal has estimated profit on bogus purchases at 10% of GP by observing vide Para 5 as under: -

*"5. I have considered rival contentions and gone through the orders of the authorities below. As per the reasons recorded and material brought on record, I do not find any infirmity in the reopening of the assessment. With regard to merit of addition, I found that assessee is dealing in Iron and Steel and had shown GP of 3.4% during the year. As per learned AR normal GP rate in case of*



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M/s. Siddharth Structural; AY 10-11

*Iron and Steel is 3 to 3.5%. Keeping in view totality of facts and circumstances of the case, I restrict the addition to the extent of 10% of the GP on the alleged bogus purchases. I direct accordingly.”*

6. In view of the above, I direct the AO to re-compute the profit on bogus purchases by estimating the profit rate at 10%.

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

Order pronounced in the open court on 07.10.2021 .

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

मुंबई, दिनांक/ Mumbai, Dated: 07.10.2021

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 (Asth. Registrar)/ व.निजी सचिव (Sr.PS)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai