

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.577/Mum/2023  
(Assessment Year :2013-14)**

**ITA No.578/Mum/2023  
(Assessment Year :2014-15)**

**ITA No.579/Mum/2023  
(Assessment Year :2016-17)**

**&**

**ITA No.580/Mum/2023  
(Assessment Year :2018-19)**

M/s. DMSONS METAL PVT. LTD. 502, Peninsula Heights, Juhu Lane Andheri (West) Mumbai – 400 058	Vs.	DCIT, Central Circle-4(1) Mumbai
<b>PAN/GIR No.AACCD6037D</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**ITA No.1183/Mum/2023  
(Assessment Year :2018-19)**

DCIT, Central Circle-4(1) Mumbai	Vs.	M/s. DMSONS METAL PVT. LTD. 502, Peninsula Heights, Juhu Lane Andheri (West) Mumbai – 400 058
<b>PAN/GIR No.AACCD6037D</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Prateek Jha & Shri Prayag Jha
Revenue by	Smt. Mahita Nair
<b>Date of Hearing</b>	<b>25/07/2023</b>
<b>Date of Pronouncement</b>	<b>31/07/2023</b>

**आदेश / O R D E R**

**PER BENCH:**

The aforesaid appeals have been filed by the assessee for A.Y.2013-14, 2014-15 & 2016-17 and the cross appeals by the assessee as well as by the Revenue for the A.Y.2018-19 against separate impugned orders of even date dated 20/01/2023 passed by CIT(A)-52, Mumbai for the quantum of assessment passed us/143(3) r.w.s. 147.

2. In all the appeals, common grounds raised by the assessee is that the ld. CIT(A) had erred in law and the facts in sustaining the disallowance on bogus purchases by applying GP rate of 12.5%. Since the facts and issues involved in all the appeals are identical and are arising out of identical set of facts and finding therefore, the same were heard together and are being disposed of by way of this consolidated order. For the sake of ready reference, appeal for A.Y.2013-14 is being taken as a lead appeal.

3. The brief facts are that assessee is engaged in business of wholesale trade of ferrous and non-ferrous metals and metallic scrap. In all the years assessee had filed its regular return of

income and all these returns were selected for scrutiny. In A.Y. 2013-14, assessment was already completed u/s. 143(3) accepting the return of income. A survey action was carried out in the case of the assessee on 18/12/2017 during the course of which it was found that assessee had made purchases amounting to Rs.36,46,273/- from M/s. Siddhi Enterprises which was reflected in the books of accounts. During the course of survey action, a statement of one of the employees of the assessee named, Shri Dhrupal Deepak Shah working as Accounts Assistant with the assessee company was recorded which indicated that purchases made from the said concerns are bogus transactions. The ld. AO also issued notice u/s. 133(6) to proprietor of M/s. Siddhi Enterprises to submit various details as noted by him at page 4 of the assessment order. In response, the proprietor of M/s. Siddhi Enterprises furnished ledger account of the assessee, ITR acknowledgement alongwith computation of income, tax audit report, copy of VAT report, VAT registration certificate, bank statement, profit and loss account and balance sheet. However, the ld. AO noted that the party has not submitted delivery challan, weighment slips, gate pass, inward register, goods notes or any documentary evidence for transportation of the said goods alongwith vehicle number, e-way bill, transporter invoice and stock movement register. The ld. AO further noted that Shri Dhrupal Deepak Shah worked as an Accounts Assistant was also son of Shri Deepak Mehta, Director of the assessee company and his statement has been reproduced in the impugned assessment order wherein he admitted that bills

from M/s. Siddhi Enterprises were bogus sales bills against which no actual delivery has been received. Similarly, he has also stated that the sale invoices issued by Shri Jagannath Steel Company are also bogus against it no goods were received by the company. It has been further noted that in the case of the Director of the assessee company, Shri Deepak Mehta in whose case search and seizure action u/s.132 was carried out and in his statement u/s.132(4) had admitted generating cash through inflating expenses which was done out of inflating of purchases. The ld. AO had also noted various discrepancies and the details furnished by M/s. Siddhi Enterprises regarding the vehicle details through whom it was claimed that in invoices the vehicle number has been mentioned. The ld. AO found that these details of vehicles were not found from the Ministry of Road and Transport and Highways. Accordingly, he treated the entire purchases made from M/s. Siddhi Enterprises as bogus and added the same.

4. The ld. CIT (A after detailed discussion held that, firstly, purchases from the said parties are not genuine however, the source of purchases are from the books and the payment has been made through banking channels and accordingly, the conclusion which can be drawn if the purchases are made from the market in cash at lower prices and assessee has not disclosed the correct prices, then at the most GP rate can be applied. After referring to the various decisions he held that in such case addition has to be made by applying gross profit rate of 12.5% on such bogus purchases.

4. Before us, the ld. Counsel for the assessee submitted that assessee had produced all the documents to substantiate the purchases alongwith payment made through account payee cheques to the said party. Apart from that, the ld. AO has not disturbed the corresponding sales of same quantity which was purchased from the said party and corresponding sales to other parties. Thus, such purchases could not have been disallowed. In any case, he submitted that GP rate applied by the ld. CIT(A) at 12.5% is too high and excessive, because assessee had shown already GP at 18.26% in A.Y.2013-14 on total sales of 296.97 Crores and purchases of Rs.242.72 Crores. Thus, there was no point to further increase the GP at such a higher rate of 12.5%. Accordingly, he submitted that under these facts and circumstances such a high GP rate should not be applied.

5. On the other hand, ld. DR submitted that it was admitted by the Accountant of the assessee company as well as the Managing Director in their statement that, firstly, purchases made from these parties were bogus; and secondly, it was admitted to be done to inflate the expenses in the books of accounts and suppress the profits. Thus, under these circumstances, the ld. AO justified in disallowing the purchases and in any case, the ld. CIT (A) has rightly applied GP rate of 12.5% which is in consonance with several judgments of this Tribunal and Hon'ble High Court.

6. We have heard rival submissions and perused the relevant finding given in the impugned orders. It is not in dispute that all the purchases are recorded in books and the source of the purchases are from the books of accounts and the payment for all the purchases including purchases made from M/s. Siddhi Enterprises and from Shri Jagannath Steel Company in A.Y.2016-17 and 2018-19 have been made through banking channels. Apart from that, the quantity of purchases, quantity of stock and corresponding quantity of sales have not been disputed by the ld. AO. Once, the purchases recorded in the books for which there is a corresponding sale, then the entire purchases could not have been added. However, the material facts which have been surfaced in the case of the assessee company, wherein it has been categorically admitted by the son of the Managing Director that purchases made from M/s. Siddhi Enterprises and Shri Jagannath Steel Company are bogus and there is no actual delivery of goods. In the statement recorded u/s. 132(4) of Managing Director of the assessee company Shri Deepak Mehta has also admitted that he has been inflating bogus expenses. All these factors point out that the purchases made from these two parties, assessee had tried to suppress the profits and therefore, applying the some gross profit rate of such alleged purchases is justified and to that extent we agree with the finding of the ld.CIT(A).

7. From the records it is seen that total sales and total purchases and all the assessment years i.e. from A.Y.2013-14 to

2018-19 and the corresponding gross profit and GP percentage was as under:-

AY	Total Sales (in Cr.)	Total Purchases (in Cr.)	Gross Profit (in Cr.)	GP Percentage	Net Profit (in Cr.)	Total Income Returned (in Cr.)
2013-14	296.97	242.72	54.25	18.26 %	2.46	2.49
2014-15	255.63	205.31	38.88	15.20%	0.54	0.63
2016-17	334.49	281.28	53.21	15.90%	4.69	4.01
2018-19	375.33	330.51	39.27	10.73 %	9.75	15.85

8. Out of these total purchases, the purchases made from M/s. Siddhi Enterprises and purchases from M/s. Jagannath Steel Company in these years are as under:-

AY	Purchases from Siddhi Enterprises	Purchases from Shri Jaganath Steel Company
2013-14	Rs. 36,46,273/-	Nil
2014-15	Rs. 7,69,205/-	Nil
2016-17	Rs. 9,62,286/-	Rs. 83,74,111/-
2018-19	Rs. 28,07,296/-	Rs. 2,69,65,516/-

9. Thus, out of total purchases, the purchases from these parties were miniscule. The assessee had already shown huge GP rate ranging from 10.73% in A.Y.2018-19; 18.28% in A.Y.2013-14. Already on these purchases, assessee had shown such a high GP rate and therefore, applying another 12.5% of such purchases would be too high and excessive. Accordingly, we hold that gross profit rate of 5% on the purchases made from these two parties would be reasonable to factor any kind of suppression of profits. This is in line with the various judgments of this Tribunal relying upon the judgments of the Hon'ble High Court including the Hon'ble Bombay High court in the case of PCIT vs. JK Surface Coatings Pvt. Ltd., in ITA No.1850 / Mum / 2017 dated 28/10/2021, wherein GP rate of 5% has been upheld in such cases. Accordingly, the gross profit rate of 5% on the alleged bogus purchases is upheld and the balance addition made by the assessee is deleted. Accordingly, the appeals of the assessee are partly allowed.

10. In so far as Revenue's appeal for A.Y.2018-19, Revenue has challenged the order of the Id. CIT (A) for applying GP rate of 12.5% confirming the entire purchases. Since, we have already held that the entire purchases cannot be added and we have already held that 5% of GP rate on such purchases made from these two parties is sufficient. Accordingly, the grounds raised by the Revenue are dismissed.

**11. In the result, appeals of the assessee are partly allowed and appeal of the Revenue is dismissed.**

Order pronounced on 31<sup>st</sup> July, 2023.

**Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

**Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

Mumbai; Dated 31/07/2023  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**