

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI. RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 1002/Mum/2024  
(Assessment Year :2012-13)**

Pavan Steel India No. 7 Doshi Bhavan, 2 <sup>nd</sup> Carpenter Street, Mumbai – 40004	Vs.	ITO 19(2)(5) Piramal Chambers, Mumbai
<b>PAN/GIR No. AAEP5518L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Ms. Pooja Chhawachharia
Revenue by	Shri. R. R. Makwana
<b>Date of Hearing</b>	<b>20/06/2024</b>
<b>Date of Pronouncement</b>	<b>28/06/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 12/02/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) r.w.s147 for the A.Y.2012-13.

2. In the grounds of appeal assessee has challenged the enhancement made by the ld. CIT(A) for adding the 100% of alleged purchases of Rs.20,79,840/-.

3. The brief facts are that assessee is a partnership firm engaged in the business of trading in ferrous and non-ferrous metals. It

has filed its return of income on 07/08/2012 declaring total income of Rs.2,04,580/-. The said return was duly accepted and processed u/s.143(1), Later on, on the basis of information from Sales Tax department that assessee had entered into purchase transaction of Rs.20,79,840/- with Shree Sudha Steels Pvt Ltd. Which was listed as hawala dealer, accordingly, assessee's case was reopened u/s.147 and notice u/s.148 was issued on 30/03/2019. The ld. AO had sent notice u/s.133(6) to Shree Sudha Steels Pvt Ltd, however, the said notices could not be served and returned with a remark 'not known'. Assessee also could not produce the party for verification. The ld. AO made the addition of entire purchases of Rs.22,29,840/-. The ld. CIT(A) too has confirmed the said addition of 100%.

4. After hearing both the parties and on perusal of the relevant facts and material on record and the finding given in the impugned orders, we find that assessee is in the business of wholesale trading of ferrous and non-ferrous metals and had declared total sales of Rs.1,30,19,487/-, as against this, it had debited purchases of Rs.1,31,48,834/-, apart from opening and closing stock. Out of total purchases of Rs.1,31,48,834/-, made during the year, the addition has been made on account of purchases made from Shree Sudha Steels Pvt. Ltd., sales of Rs.20,29,840/- which has been added on the basis of information from sales tax department and *secondly*, notice u/s.133(6) sent by the ld. AO could not be served. It has been stated before us that assessee had submitted purchases register,

purchase invoices, bank statement highlighting the transaction that assessee had made purchases from the sources disclosed in the books and there is also corresponding sales made of the same quantity. Assessee had declared gross profit rate of 17.9% on the same purchases. Apart from that it has also been submitted that in the various decisions, the Hon'ble Bombay High Court following the judgment of PCIT vs. Mohammad Haji Adam And Co. in ITA No.1004 of 2016 dated 11/02/2019 have held that addition should be restricted to gross profit rate on such kind of purchases. The reason being the source of purchases are from the books and corresponding sales have not been disputed and the trading account is disturbed, then the entire purchases cannot be added. Further, ld. Counsel submitted that in the case of ferrous and non-ferrous metal in the case of PCIT vs. Uni Packs Ltd. in ITA No.194 of 2017 dated 30/04/2019 has upheld the GP rate of 2%.

5. On the other hand, ld. DR submitted that at least GP rate of 12.5% should be applied as held in the Hon'ble Bombay High Court in the case of PCIT vs. Mohammad Haji Adam And Co. (supra).

6. Now it is well settled that in cases where sales are not disturbed and the purchase quantity and sale quantity have been accepted and purchases have been made through account payee cheques and source of said purchases are disclosed in the books, then at the most GP rate should be applied. Since assessee had already disclosed GP rate of more than 17.9%,

therefore, we hold that 5% GP rate should be applied over and above the GP disclosed by the assessee on the alleged bogus purchases of Rs. 20,29,840/-.

**7. In the result, appeal of the assessee is partly allowed.**

Order pronounced on 28<sup>th</sup> June, 2024.

**Sd/-**  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 28/06/2024  
KARUNA, sr.ps

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

**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**