



आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI**

श्री अमित शुक्ला, न्यायिक सदस्य  
श्री राजेश कुमार, लेखा सदस्य एवं के समक्ष ।

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No. : 7708/Mum/2014**

(Assessment year: 2008-09)

**ITA No. : 7709/Mum/2014**

(Assessment year: 2009-10)

**ITA No. : 7710/Mum/2014**

(Assessment year: 2010-11)

प्राइड स्टील्स प्राइवेट लिमिटेड M/s Pride Steels Pvt Ltd, Flat No.109, Ashirwad Building, Ahemdabad Street, Masjid (East), Mumbai -400 009 PAN: <b>AAACP 2140 B</b>	<b>Vs</b>	DCIT-Cent. Cir.10, R. No.108, 1 <sup>st</sup> Floor, Pratyakshkar Bhavan, BKC Bandra, Mumbai -400 051
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by		कोई नहीं None
Respondent by		श्री दीपकान्त प्रसाद Shri Deepkant Prasad

सुनवाई की तारीख /Date of Hearing : 19-10-2016

घोषणा की तारीख /Date of Pronouncement : 19-10-2016

आदेश  
**ORDER**

**PER BENCH:**

The aforesaid appeals have been filed by the assessee against common impugned order dated 16.10.2014, passed by Ld. CIT(Appeals)-37, Mumbai for the assessment year 2008-09, 2009-10 and 2010-11. Since issue involved in all

the three appeal are common arising out of identical set of facts, therefore, they are being disposing off by way of this consolidated order.

2. At the outset, it is noticed that, the first date of hearing was fixed for 01.08.2006 and the assessee was intimated the date of hearing through notice on the address mentioned in Form No.36. Thereafter, on 01.08.2016, again notice was sent through RPAD fixing the date of hearing for 19.10.2016. The said registered post was sent on the same address as mentioned in column 10 of Form No.36. However, the said RPAD too has been returned back unserved. Thus, it is presumed that, assessee has either shifted his address without intimating to the Registry or is not interested in prosecuting its appeal. Accordingly, we are proceeding to decide the appeal on merits.

3. The common issue involved in all these appeals is estimation of commission income @ 3% on transaction of purchase and sales.

4. The brief facts, as noted in the impugned order are that, a search and seizure action under section 132(1) was conducted in the case of Rustomjee Evershine Group on 20.10.2010 wherein, certain data and documents were seized belonging to the assessee. Accordingly, notice under section 153A r.w.s. 153C was issued on 26.12.2012 to the assessee, in response to which assessee has also filed its return of income. The assessee was engaged in the business of trade/supply of iron and steel such as M S Plate, Sheet, Pipes and other allied products. A survey was conducted on the

assessee Company on 05.12.2012 under section 133A by the DDIT(Inv.), Unit 1(4), Mumbai, during the course of which certain bills of purchase and sales and other information was gathered. It was found that the assessee company along with its sister concern, M/s Pawan Jyoti Steels Private Limited was taking accommodation entries in the nature of bogus purchases from suspicious hawala traders, who were known in the market of having indulged in providing only accommodation entries. In the search proceedings of Rustomjee Group, it was found that the assessee company along with its sister concern M/s Pawan Jyoti Steels Private Limited had issued accommodation bills to Rustomjee Group. The bill invoices were found to be unsigned. The order no. was mentioned as 'verbal'. Where ever, the order nos. was mentioned, they were numbered serially and thereafter bills were prepared at one go. None of the vouchers were supported by goods receipt or delivery challans or any other transport documents. The acceptance of accommodation bill was admitted by Shri Hemant Chokshi of Rustomjee Group in the statement recorded on 20.10.20010. The relevant extract of the statement has been incorporated in the assessment order. At the time of survey, statement of the Director of the assessee company was recorded under section 131 at the premises of the assessee-company, wherein he admitted that, he was involved in giving accommodation bills to Rustomjee Group. However, it was also stated that for the other parties, the assessee was carrying out genuine and actual transactions. The Assessing Officer had further noted that, assessee company along with the sister concern, had admitted that, they have provided accommodation entries to the tune of Rs.1.29 crores. Since assessee was unable to give

correct details of delivery of goods and other details, he therefore, rejected the books of accounts and estimated the net profit report of 2.5%, that is, 2% on the accommodation sales and 3% for other sales right from assessment year 2008-09 to 2010-11. The Ld. CIT (A) after noting down the following facts observed and held as under:-

*“4.5 The position emerging from the copies of the profit & loss account and based on the assessment orders is tabulated below:*

Particulars	AY			
	2005-06	2006-07	2007-08	2008-09
Sales	56,542,240	59,948,599	181,638,984	241,977,049
Other Income	-	1,000	25,626	-
Purchases /COGS	55,662,891	58,938,498	176,898,810	235,898,931
Gross Profit	879,349	1,010,101	4,740,174	6,078,118
GP % of Sales	1.56	1.68	2.61	2.51
Net Profit	26,086	120,927	211,560	202,221
NP % of Sales	0.05	0.20	0.12	0.08
Enhancement as Per AO	1,387,470	1,377,563	4,329,415	6,371,346
NP as per AO	1,413,556	1,498,714	4,540,975	6,573,567
NP as % of sales As per AO	2.5%	2.50%	2.50%	2.72%

Particulars	AY		
	2009-10	2010-11	2011-12
Sales	235,882,382	242,114,182	264,862,070
Other Income	90,361	7,116	327,248
Purchases /COGS	232,720,740	236,987,400	258,844,013
Gross Profit	3,161,642	5,126,782	6,018,057
GP % of Sales	1.34	2.12	2.27
Net Profit	234,474	830,050	2,210,428
NP % of Sales	0.14	0.34	0.46
Enhancement as Per AO	5,840,943	5,345,978	5,260,673
NP as per AO	6,165,417	6,176,028	6,471,101
NP as % of sales As per AO	2.61%	2.55%	2.44%

4.6. It has been contended that statement made by personnel of Rustomjee Group does not state that the transactions are not genuine. It is seen that the Director of Keystone Realtors Pvt Ltd Shri Boman Irani of Rustomjee Group in his various statements recorded including that on 21/10/2010 has clearly admitted that no material was received from the appellant company and its sister concern and therefore has admitted its false claim of expenditure to the extent of Rs.1.92 cores. Even Shri Govardhan Shah of the

*appellant has admitted as much by his detailed depreciation of modus operandi. Hence this contention of appellant is contrary to facts and is rejected.*

*4.7 It has been contended that the impugned transactions with Rustomjee Group is for AY 2008-09 to AY 2010-11 and how can that be extrapolated to earlier and subsequent assessment years and to transactions other than that with Rustomjee Group. I find that the assessing officer has clearly brought the parties who have given hawala bills without any genuine transactions. The appellant has shown purchases from these parties issuing Hawala Bills. Further, the total purchases from these parties far exceeds the transactions with Rustomjee Group. Despite being confronted by these facts, the appellant has been unable to rebut the same before the assessing officer. Nothing is presented before me either. Lastly, the evidences to establish genuineness of other sale and purchase transactions were not presented before me nor the assessing officer. The only plea taken is that the books of accounts were impounded by the sales tax authorities. Even after 3 years of sales tax action, why appellant could not gather information to prove any genuineness of transactions as is claimed is not explained. It would know at least some parties with whom it had regular transactions. Confirmations from such parties could have been obtained. It could have obtained information from its bank statements from its bankers and reconstructed details of purchase and sales transactions, if they were indeed genuine. No such efforts were made. In such circumstances, the logical inference is that the appellant did not have any genuine transactions and is merely using the action by the sales tax authority as a ruse to express helplessness. The contention of the appellant is rejected. The transactions are rightly held to be in the nature of providing accommodation bills by the assessing officer.*

*4.8 Before me it was argued that no banks were produced before assessing officer so how can the books be rejected. Section 145(3) speaks of situation where the assessing officer is not satisfied about the correctness or completeness of the accounts of the*

*assessee. In the present case, the return is based on audited accounts but the appellant is unable to substantiate its accounts by producing books and basic records. It is admitted fact that the purchases are bogus as is sales. Thus, no fault can be found in the action of assessing officer in rejecting the books of accounts of the appellant”.*

6. After hearing the Ld. DR and on perusal of the finding given in the impugned orders, we find that, neither before the CIT(A) nor before us there is any rebuttal of the finding of fact arrived at on the basis of appraisal of facts and material gathered. Even for the application of net profit rate, the assessee has been unable to give any comparable transaction or any other material fact to demonstrate that net profit rate estimated by the Assessing Officer is either high or excessive. Thus, in absence of any contrary material, we have no option but to affirm the order of the CIT(A). Accordingly, the order of CIT(A) is affirmed and resultantly, grounds raised in all the appeals of the assessee are dismissed.

7. In the result, appeals of the assessee are dismissed.

Order pronounced in the open court on 19<sup>th</sup> October, 2016.

**Sd/-**

(राजेश कुमार)

लेखा सदस्य

**(RAJESH KUMAR)**

**ACCOUNTANT MEMBER**

**Sd/-**

(अमित शुक्ला)

न्याईक सदस

**(AMIT SHUKLA)**

**JUDICIAL MEMBER**

**Mumbai, Date: 19<sup>th</sup> October, 2016.**

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
  - 2) प्रत्यर्थी /The Respondent.
  - 3) The CIT (Appeal) -37, Mumbai.
  - 4) The CIT-Central-I, Mumbai
  - 5) विभागीय प्रतिनिधि "सी", आयकर अपीलीय अधिकरण, मुंबई/  
The D.R. "C" Bench, Mumbai.
  - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

// True Copy //

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, मुंबई  
Dy./Asstt. Registrar  
I.T.A.T., Mumbai

\*चव्हान व.नि.स

\*Chavan, Sr.PS