

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 1561/MUM/2019  
Assessment Year: 2011-12**

ITO-17(1)(1)  
Room No.115, 1<sup>st</sup> Floor  
Aaykar Bhawan  
M.K.Road  
Mumbai-400 020

Mr. Abhay Kantilal Shah  
Vs. 501, Giriraj Building  
Sant Tukaram Road  
Mumbai-400 009

**PAN No. AAGPS3930H**

**Appellant**

**Respondent**

Assessee by : None  
Revenue by : Shri Uodal Raj Singh (DR)

Date of Hearing : 21/09/2020  
Date of pronouncement : 24/09/2020

**ORDER**

PER N.K. PRADHAN, A.M.

This is an appeal filed by the revenue. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-55, Mumbai [in short 'CIT(A)'] and arises out of assessment u/s. 143(3) r.w.s. 147 of the Income Tax Act. 1961(the Act). Though the case was fixed for hearing on 21/09/2020, neither the assessee nor his Authorized Representative (AR) appeared before the Tribunal on the above date. As there is non-compliance by the assessee, we are proceeding to dispose-off this appeal after examining the materials available on record and after hearing the Ld. Departmental Representative (DR).

2. Briefly stated the facts of the case are that the assessee filed his return of income for the AY 2011-12 on 28/09/2011, declaring total income of Rs.3,09,541/-. The assessee is engaged in the business of resale of iron & steel and he is the sole proprietor of Abhay K.Shah & Co. The Assessing Officer (AO) received information from the Director General of Income Tax (Inv.), Mumbai that the assessee had made bogus purchases from the following hawala parties during the FY 2010-11 relevant to the AY 2011-12

Sr.No.	Name of the Hawala Parties	Amount (Rs.)
1	DAKSHA ENTERPRISES	82,825
2	PAYAL ENTERPRISES	4,54,287
	<b>TOTAL</b>	<b>5,37,112</b>

On the basis of the above information, the AO reopened the assessment by issuing notice u/s.148 of the Act. During the course of reassessment proceedings, in response to the notice u/s.143(2) & 142(1), the assessee filed before the AO copies of (i) bank statements for the financial year 2010-11, evidencing the payments made to these parties; (ii) ledger account of all the parties; (iii) purchase invoices from these parties and (iv) sale invoices as issued by the assessee against the purchases made.

However, the AO was not convinced with the above explanation /reply of the assessee for the reason that no direct evidence like stock register, journal etc., and indirect evidence such as delivery challans, lorry receipts, octroi payment, quantity tally, confirmation from transport operator, godown rent, bank account clearance certificate etc., were produced. Considering the above facts, the AO made an addition of Rs.5,37,112/-.

3. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld.CIT(A). We find that *vide* order dated 13/12/2018, the Ld.CIT(A) by

following the decision in *CIT vs. Bholanath Poly Fab (P.) Ltd.* (2013) 355 ITR 290 (Guj.) directed the AO to estimate profit @12.5% on the disputed purchases of Rs.5,37,112/-.

4. Before us, the Ld. DR submits that as the assessee failed to file before the AO stock register, delivery challans, lorry receipts, octroi payment, quantity tally, there was no sufficient compliance during the course of assessment proceedings. Therefore, it is stated by him that the full addition of Rs. 5,37,112/- made by the AO be confirmed.

5. We have heard the Ld. DR and perused the relevant materials available on record. In instant case, as mentioned earlier, the assessee has filed before the AO copies of (i) bank statements for the financial year 2010-11, evidencing the payments made to these parties; (ii) ledger account of all the parties; (iii) purchase invoices from these parties and (iv) sale invoices as issued by the assessee against the purchases made. In such a situation, the AO could have made further verifications /enquiries. However, without making any verification /enquiry, the AO has made the full addition of Rs.5,37,112/-.

In such a situation like the above one, the Ld.CIT(A) has rightly relied on the judgment of the Hon'ble Gujarat High Court in *Bholonath Poly Fab (P) Ltd.* (supra) and directed the AO to estimate the profit @ 12.5% embedded in the disputed purchases of Rs.5,37,112/-.

In view of the above facts, we uphold the order of the Ld.CIT(A).

6. In the result, the appeal filed by the revenue is dismissed.

ITA No. 1561/MUM/2019  
Shri Abhay Kantilal Shah

Order pronounced through notice board under rule 34(4) of the  
Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Mumbai:  
Dated: 24/09/2020  
THIRUMALESH, Sr.PS

Sd/-  
**(N.K. PRADHAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,  
(Dy./Asstt. Registrar)  
**ITAT, Mumbai**