

THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Shri B.R. Baskaran (AM)

I.T.A. No. 1449/Mum/2021 (A.Y. 2008-09)

Mr. Dhanesh Mulji Gala 137, 1 st Floor Kika Street, Gulalwadi Mumbai-400 004. PAN : AAJPG2075J (Appellant)	Vs.	ITO, Ward- 19(1)(4) Mumbai. (Respondent)
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I.T.A. No. 1456/Mum/2021 (A.Y. 2009-10)

I.T.A. No. 1457/Mum/2021 (A.Y. 2010-11)

I.T.A. No. 1458/Mum/2021 (A.Y. 2011-12)

Mr. Dhanesh Trading Co. 137/139, 1 st Floor, Kika Street, Gulalwadi Mumbai-400 004. PAN : AAAFD1264H (Appellant)	Vs.	ITO, Ward- 19(1)(4) Mumbai. (Respondent)
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Assessee by	None
Department by	Shri Vivek Upadhyay
Date of Hearing	16.08.2022
Date of Pronouncement	16.08.2022

ORDER

The assessee Shri Dhanesh Mulji Gala has filed appeal for assessment year 2008-09. The assessee M/s Dhanesh Trading Co, a partnership firm, has filed appeals for assessment years 2009-10 to 2011-12. All these appeals were heard together and are being disposed of by common order, for the sake of convenience.

2. None appeared on behalf of the assessee, even though the hearing was adjourned on several occasions at the specific request of the assessee. Hence I

proceed to dispose of these appeals, ex-parte, without the presence of the assessee.

3. All the three appeals filed M/s Dhanesh Trading Co., and the appeal filed by Shri Dhanesh Mulji Gala are barred by limitation. The Chartered Accountant of the assessee Shri Harakhchand K Cheheda has filed affidavits owning up the responsibility for the delay in filing these appeals. I heard Ld D.R on this preliminary issue. Having regard to the submissions made in the affidavits filed by the C.A of the assessee and further to the reason that the delay has occurred due to the default on the part of the Counsel of the assessee, I am of the view that there was reasonable cause for both the assessees in filing these appeals belatedly. Accordingly, I condone the delay in filing these appeals and admit them.

4. In the appeals filed by Shri Dhanesh Mulji Gala and M/s Dhanesh Trading Co, the common issue urged relates to the addition made on account of alleged bogus purchases.

5. Both the assesses are engaged in the business of trading in Ferrous metals. The AO received information that these assesseees have purchased materials from persons, who were identified as hawala dealers. The allegation is that these hawala dealers were providing bogus bills only, without actually supplying the materials. Accordingly, the AO reopened the assessments of the years under considerations in the hands of the respective assesseees. The AO issued notices u/s 133(6) of the Act to the parties, who claimed to have supplied materials to these assesseees, but there was no response from them. These assesseees also could not produce the said suppliers before the AO. Accordingly, the AO held that the purchases made by these assesseees from the alleged hawala dealers are bogus in nature. The AO further took the view that the profit element embedded in the alleged bogus purchases is liable to assessed in the hands of these assesseees. Accordingly, the AO estimated the profit element embedded in the non-genuine purchases @ 12.50% of the value

of purchases and assessed it in all the years under consideration in the hands of respective assesseees.

6. Before LdCIT(A), both the assesseees challenged the validity of re-opening of assessments and also objected to the assessment of profit element in the alleged bogus purchases. However, LdCIT(A) dismissed all the appeals. Aggrieved, both the assesseees have filed these appeals challenging the addition made in their respective hands in the years under consideration.

7. I heard Ld D.R and perused the record. I notice that the Ld CIT(A) has confirmed the additions by following the decision rendered by Hon'ble Gujarat High Court in the case of Simit P Sheth (356 ITR 461)(Guj), wherein it has been held that the profit element involved in the bogus purchases should be brought to tax. Since Learned CIT(A) has followed the decision rendered by Hon'ble Gujarat High Court, I do not find any reason to interfere with the orders so passed by him in the hands of both the assesseees for the years under consideration.

8. In the result, all the appeals of these assesseees are dismissed.

Order pronounced in the open court on 16.08.2022.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 16/08/2022

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//

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai