

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

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4158/MUM/2018  
Assessment Year: 2010-11**

**&**

**ITA No. 4159/MUM/2018  
Assessment Year: 2011-12**

Income Tax Officer  
33(2)(5), Room No. 611, 6<sup>th</sup>  
floor, Bldg. No. C-12,  
Pratyakshakar Bhavan,  
Bandra Kurla Complex,  
Bandra (East), Mumbai-  
400051.

Vs. Paresh S. Sanghvi (HUF)  
B-307, Highway Park E-  
3, Thakur Complex,  
Kandivali (E), Mumbai-  
400101.

**Appellant**

**PAN No. AAIPH2161F  
Respondent**

Revenue by : Mr. Chaitanya Anjaria, DR  
Assessee by: Mr. G.C. Lalka, AR

Date of Hearing : 06/05/2019  
Date of pronouncement: 13/05/2019

**ORDER**

**PER N.K. PRADHAN, AM**

The captioned appeals filed by the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-45, Mumbai [in short CIT(A)] and arise out of the assessment completed u/s 143 r.w.s. 147 of the Income Tax Act 1961 (the 'Act'). As common issues are involved, we are proceeding to dispose them off through a consolidated

order for the sake of convenience. Facts being identical, we begin with the assessment year (AY) 2010-11.

2. The grounds of appeal filed by the revenue read as under:
  - i. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made in respect of bogus purchases especially when CIT(A) has clearly found that the assessee did not substantiate the claim of genuine purchases.
  - ii. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in determining the profit percentage at the rate of 4% of bogus purchases, while the assessee failed to establish the genuineness of the purchases claimed.
  - iii. The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside that of the Assessing Officer be restored.

3. Briefly stated, the facts are that the assessee filed his return of income for AY 2010-11 on 28.09.2010 declaring total income at Rs.4,73,576/-. The return was processed u/s 143(1) of the Act. Subsequently, the Assessing Officer (AO) received information from the Sales Tax Department that the assessee has shown purchases from parties who have merely issued accommodation bills to it. Accordingly, the AO issued notice u/s 148 dated 19.09.2014 to the assessee. In response to it, the assessee filed a letter dated 04.11.2014 stating that the return filed on 28.09.2010 may be treated as return in response to notice u/s 148 of the Act.

As per the information received, the assessee was a beneficiary of purchase bills during the previous year relevant to the assessment year

under consideration and had accepted bogus bills from the following parties :

Sr. No.	TIN No.	Name of Parties	F.Y	Amount (Rs.)
1.	27350705382V	Ambika Trade Impex	2009-10	6,19,674/-
2.	27920665638V	Shivraj Traders	2009-10	14,38,552/-
3.	27930605735V	Krishna Trading Co.	2009-10	17,64,146/-
			<b>Total</b>	<b>38,22,372/-</b>

During the course of reassessment proceedings, the AO issued notices u/s 133(6) to each of the parties on the address given as per information received from the Sales Tax Department as well as from the purchase list but no confirmation with respect to the transactions were received in response to the above notices.

During the course of assessment proceedings, the assessee submitted copy of the ledger account of the parties, purchase and corresponding sales bills and stated that payments have been made through cheques only. However, the AO found that barring the above documents, the assessee could not file other documents like delivery challan, lorry receipt, transportation details etc. of purchases made from the above parties. The assessee also could not produce the above parties before the AO for examination.

Considering the above facts, the AO made a disallowance of the total amount of Rs.38,22,372/-.

4. In appeal, the Ld. CIT(A) *vide* order dated 14.03.2018 held as under:

“5.3 Though, the appellant was not able to produce the concerned parties before the Assessing Officer, fact remains that the appellant produced bank account statement, purchase bills, etc., to prove the genuineness of the purchases. It is also a fact on record that the Assessing Officer has not doubted the sales affected by the appellant. Thus, it is logical to conclude that without corresponding purchases being affected, the appellant could not have made the sales. Merely relying upon the information from the Sales Tax Department the Assessing Officer could not have treated the purchases as bogus. The appellant has brought documentary evidences on record to prove genuineness of such transactions, the action of the Assessing Officer in ignoring them cannot be accepted. When the payment to the concerned parties are through proper banking channel and there is no evidence before the Assessing Officer that the payments made were again routed back to the appellant, the addition of Rs.41,54,650 being entire disputed purchases not sustainable in law and facts. Only corollary that follows in such situation is that the appellant could have obtained the accommodation bills for the material purchased locally. Therefore, the saving on account of VAT and other incidental charges made by the appellant on the said bogus purchases can be brought to tax as additional profit. It is seen that the GP of the appellant over the years is around 2%. Keeping in view the totality of facts and circumstances of the case, the disallowance made by the AO is restricted to 4% of such purchases of Rs.33,22,372, which comes to Rs.1,52,895. The AO is directed to modify the addition to Rs.1,52,895. Appellant gets part relief. This ground is partly allowed.”

5. Before us, the Ld. DR supports the order passed by the AO, whereas the Ld. counsel of the assessee relies on the order of the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. In the instant case, the assessee is deriving income

from business of trading in iron and steel goods. It is found that the GP of the assessee over the years is around 2%. We agree with the order of the Ld. CIT(A) wherein he has restricted the disallowance made by the AO to 4% of such purchases of Rs.38,22,372/- which comes to Rs.1,52,895/- by considering the fact that saving on account of VAT and other incidental charges made by the assessee on the said bogus purchases can be brought to tax as additional profit.

Facts being identical, our decision for the AY 2010-11 applies *mutatis mutandis* to AY 2011-12.

7. In the result, the appeals filed by the revenue are dismissed.

**Order pronounced in the open Court on 13/05/2019**

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER  
Mumbai;  
Dated: 13/05/2019  
*Rahul Sharma, Sr. P.S.*

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,

(Sr. Private Secretary)  
**ITAT, Mumbai**