

**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. 3313/MUM/2018
Assessment Year: 2010-11**

&

**ITA No. 3314/MUM/2018
Assessment Year: 2011-12**

Shri Jethmal Bansraj Jain,
Shop No. 1, R.K. Wadi, V.P.
Road, 2ndParsiwada Lane,
Mumbai-400004.

ITO-19(2)(1),
MatruMandir, 2nd floor,
Vs. Mumbai-400007.

PAN No. AAAPJ8298D
Appellant

Respondent

Assessee by : None
Revenue by : Mr. Chaitanya Anjaria, DR

Date of Hearing : 14/05/2019
Date of pronouncement: 27/05/2019

ORDER

PER N.K. PRADHAN, A.M.

The captioned appeals filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-2, 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. As there is no compliance by the appellant to the notice issued by the Registry fixing the case for hearing

on 14.05.2019, we dispose off this appeal by hearing the Ld. DR and examining the materials available on record. Facts being identical, we begin with the assessment year (AY) 2010-11.

2. The ground of appeal filed by the assessee reads as under:

The Ld. CIT(A) has erred in upholding the order of the Ld. AO and disallowing the purchase to the extent of 12.5% of Rs.42,85,811/- amounting to Rs.5,35,726/- on account of purchase from non genuine purchase parties.

3. Briefly stated, the facts are that the assessee filed his return of income for the assessment year (AY) 2010-11 on 17.09.2010 declaring total income of Rs.3,09,029/-. On receipt of information from the Director General of Income Tax (Inv.), Mumbai that as per the investigation of the Sales Tax Department, Government of Maharashtra, the assessee was involved in obtaining accommodation entries of bogus purchases of Rs.42,85,811/- from Gaurav Steel India during the financial year 2009-10, the AO issued notice u/s 148 and reopened the assessment.

During the course of reassessment proceedings, the AO noticed that barring the ledger account and cheque payment, no other document such as delivery challans, lorry receipts, transportation details were produced by the appellant. Further observing that since the assessee had provided stock statement and entries of the said purchases, the AO came to a finding that the assessee must have purchased from open market from some parties best known to him. Thereafter relying on the decision in the case of *CIT v. Simit P. Sheth* 356 ITR 451 (Guj) and *M/s Bholanath Poly Fab P. Ltd.* 355 ITR 290, the AO estimated the profit @

12.5% on the said amount of Rs.42,85,811/- and thus made a disallowance of Rs.5,35,726/-.

4. In appeal, the Ld. CIT(A) agreed with the reasons given by the AO and confirmed the disallowance of Rs.5,35,726/-.

5. The Ld. DR supports the order passed by the Ld. CIT(A).

6. We have heard the Ld. DR and perused the relevant materials on record. In the instant case, the assessee is engaged in the business of trading in ferrous and non-ferrous metals under the name and style of M/s J.P. Steel. The estimation @ 12.5% done by the AO on total disputed purchases of Rs.42,85,811/-, which later on has been confirmed by the Ld. CIT(A) is on the higher side. Considering the nature of the business of the appellant, we direct the AO to restrict the disallowance to 5% of the said purchases of Rs.42,85,811/- in AY 2010-11.

Facts being identical our decision for AY 2010-11 applies *mutatis mutandis* to AY 2011-12. Accordingly, we direct the AO to restrict the disallowance 5% of the disputed purchases of Rs.1,28,39,477/- in AY 2011-12.

7. In the result, the appeals are partly allowed.

Order pronounced in the open Court on 27/05/2019.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

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

Mumbai;

Dated: 27/05/2019

Rahul Sharma, Sr. P.S.

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