

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA Nos.3532 & 3533/M/2018
Assessment Years: 2010-11 & 2011-12**

**ITA Nos.3534 & 3535/M/2018
Assessment Years: 2010-11 & 2011-12**

Shri Pravin Dayaldas Gandhi, A-Wing, Flat No.9, Hiren CHS, Gokhale Road, Dahanukar Wadi, Kandivali (W), Mumbai – 400 067 PAN: ACBPG2335H	Vs.	ITO-32(2)(5), C-13, Pratyakshakar Bhavan, BKC, Bandra (E), Mumbai - 400051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ishwar Prakash Rathi, A.R.
Revenue by : Shri Arvind Kumar, D.R.

Date of Hearing : 19.06.2019

Date of Pronouncement : 28.06.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled four appeals have been preferred by the assessee against the order dated 09.08.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2010-11 & 2011-12.

ITA No.3532/M/2018 A.Y. 2010-11

2. The issue raised in ground No.1 is against the order of Ld. CIT(A) upholding the reopening of assessment framed by the AO under section 147 of the Act.

3. At the time of hearing the Ld. Counsel of the assessee did not press this ground and accordingly the same is dismissed as not pressed.

4. The issue raised in ground No.2 is against the confirmation of disallowance to the tune of 12.5% of the alleged bogus purchases of Rs.1,11,71,532/- thereby sustaining an addition of Rs.13,96,441/- which is over and above the gross profits shown by the assessee in the books of accounts.

5. The facts in brief are that the assessee filed return of income on 11.09.2010 declaring an income of Rs.2,40,872/- which was processed under section 143(1) of the Act. Thereafter, the case of the assessee was reopened u/s 147 r.w.s. 148 of the Act after AO received an information from Sales Tax Department, Government of Maharashtra and DGIT, (Investigation) that assessee is a beneficiary of bogus hawala purchase bills to the tune of Rs.1,11,71,532/- from 10 hawala parties as detailed in para 2 of the assessment order. The AO issued notice under section 148 of the Act on 27.02.2014 and thereafter during the assessment proceedings called upon the assessee to furnish various details and evidences to prove the genuineness of these purchases. The AO also issued notices under section 133(6) of the Act to these parties. However, the said notices were not returned unserved or unclaimed. The assessee during the course of assessment proceedings filed bills, vouchers, bank details etc to prove the genuineness of the purchases. However, the AO was not convinced with the said evidences and came to the conclusion that assessee should have furnished the inward stock register and consumption/sales

records to prove the genuineness of the purchases. Finally the AO after rejecting the books of accounts under section 1145(3) of the Act added the entire purchases as unexplained expenditure under section 69C of the Act by framing assessment under section 143(3) read with section 147 vide order dated 18.03.2015.

6. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by sustaining the addition to the extent of 12.5% of the bogus purchases thereby confirming the addition to the extent of Rs.13,96,441/- by following the decision of Hon'ble Bombay High Court in the case of Nikunj Enterprises 372 ITR 619 (Bom.). The Ld. CIT(A) observed that the entire purchases can not be added to the income of the assessee and it is only a profit element embedded in these purchases which should be brought to tax and accordingly applied a rate of 12.5% .

7. After hearing both the parties and perusing the material on record, we observe that the assessee is engaged in the business of trading of iron and steel sheets, angles, coils etc. and the GP rate varies from 1.18% to 2.20% as is apparent from the statement of comparative GP of four years filed during the course of hearing. We note that during the year under consideration, the GP returned by the assessee was 1.83%. The Ld. CIT(A) has correctly held that entire purchases could not be added to the income of the assessee and that only profit element in the said purchases have to be brought to tax however we are not in agreement with the rate applied on the alleged purchases. In this case, we observe that the assessee has already accounted

for these purchases in the books of accounts and have returned the profits on these purchases. Under these circumstances, in our view, the only savings which the assessee may have made by purchasing the goods from the grey market have to be brought to tax. In the present case, the assessee is a dealer in iron and steel items and the applicable VAT rate is 4%. Under these circumstances, we are of the view that the purchases which are stated to be bogus should be brought to tax @ 5%. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to apply a rate of 5% on these bogus purchases.

8. In the result, the appeal of the assessee is allowed.

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9. The issue involved in these appeals is identical to the one as decided by us above in ITA No.3532/M/2018 for A.Y. 2010-11. Therefore, our findings in ITA No.3532/M/2018 for A.Y. 2010-11 would, mutatis mutandis, to these appeals as well. Accordingly the appeals of the assessee are allowed.

10. In the result, all the four appeals of the assessee are allowed.

Order pronounced in the open court on 28.06.2019.

**Sd/-
(Mahavir Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 28.06.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent

The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.