

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

**BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER**

**ITA No. 6531 & 6533/Mum/2018  
(Assessment Year: 2009-10 & 2012-13)**

I.T.O.-33(2)(2), Room No. 609, 6 <sup>th</sup> Floor, C-12, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400051.	Vs.	Shri Kaushik Sumanlal Vakharia, B/42, Dev Nagar, Near Bhatia School, Sai Baba Nagar, Kandiwali (West), Mumbai-400067.
<b>PAN/GIR No.AANPV 7006 Q</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Kumar Padmapani Bora (Sr.DR)
Assessee by	Shri Vimal Punmiya
<b>Date of Hearing</b>	<b>09/10/2019</b>
<b>Date of Pronouncement</b>	<b>06/12/2019</b>

**आदेश / O R D E R**

**PER: R.C. SHARMA, A.M.**

These are the appeals filed by the revenue against the separate orders of the Id. CIT(A)-45, Mumbai dated 02/07/2018 for the A.Y. 2009-10 and 2012-13 in the matter of order passed U/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act).

2. In both these appeals, the revenue is aggrieved by the action of the Id. CIT(A) for deleting the entire addition made by the A.O. by estimating 2.5% of the total turnover as income of the assessee.

3. The Id Sr.DR relied on the order passed by the A.O. and contended that after making detailed inquiries, the A.O. found the purchases as bogus, therefore, correctly added the same in assessee's income.

4. At the outset, the Id AR of the assessee placed on record the order of the Tribunal in assessee's own case for the A.Y. 2008-09 & 2009-10 in ITA No. 2380/Mum/2012 and 2621/Mum/2016 order dated 29/05/2018 wherein under similar facts and circumstances, the order of the Id. CIT(A) was upheld wherein he has restricted the addition by adopting G.P. rate of 2.5% and further reducing it by the G.P. rte already declared by the assessee. The precise observation of the Tribunal was under:

*"8. Having heard rival submissions, we find that in this case assessee has made purchases to the tune of Rs. 1,38,29,815/- from has made purchases from M/s Dharmendra Associates, which were found to be non-genuine by the Assessing Officer as the said party had denied to any transactions with the assessee. In defence, the assessee furnished before the Assessing Officer copies of purchase bills, ledger account copies of said parties and copies of bank statements showing payment made to the parties during the accounting period 2008-09 and 2009-10. However, the Assessing Officer was not satisfied with the explanations and added the entire amount to the income of the assessee. On appeal, the learned CIT(A) reduced the addition to Rs. 19,03,381/- by applying the highest gross profit rate during the previous year i.e. @ 0.744% of the total turnover. We have considered the facts of the case as also the decisions of the co-ordinate Benches taking a view that in case of non-genuine purchases the*

*addition should be sustained from 2% to 12.5%. We find that though the Assessing Officer has considered the purchases as non-genuine, has not disputed the sale of material. Under these facts, we are of the view that the order passed by the CIT(A) confirming the addition of Rs. 19,03,381/- is quite reasonable and does not require any interference.”*

5. The Id. AR also invited out attention to the detailed findings recorded by the Id. CIT(A) which reads as under:

*“4.2 Though, it may be a fact that 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 said purchases as bogus. The appellant has brought documentary evidences on record to prove genuineness of such transactions, the action of the Assessing officer is 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 routed back to the appellant, the addition of additional Rs. 50,00,344/- being 2.64% (4%-1.36%) of gross profit on the total turnover is not sustainable in law and facts. 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. Keeping in view that totality of facts and circumstances of the case, the estimation made at 4% is restricted to 2.5%. The assessee had already declared GP @ 1.36%. Therefore, the addition will be 1.14% of the total turnover 18,91,01,626/- which will work out to Rs. 21,55,758/-. The AO is directed to modify the addition accordingly and the appellant gets part relief. This ground is partly allowed.*

6. It is clear that during the years under consideration, the Id. CIT(A) has applied the same GP rate of 2.5% and reduced it by the

GP shown by the assessee. As the facts and circumstances during the years under consideration are pari materia, respectfully following the order of the Tribunal in assessee's own case for the A.Y. 2008-09 and 2009-10 dated 29/05/2018, I do not find any infirmity in the order of the Id. CIT(A) for restricting the addition on account of alleged bogus purchases by applying GP rate of 2.5% and giving further reduction on account of profit shown by the assessee.

7. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 06<sup>th</sup> December, 2019.

**Sd/-**  
**(R.C.SHARMA)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 06/12/2019

\*Ranjan

**Copy of the Order forwarded to :**

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**