



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

ITA no.7502, 7503 and 7504/Mum./2018  
(Assessment Year : 2009-10, 2010-11 and 2011-12)

Income Tax Officer  
Ward-31(2)(5), Mumbai

..... Appellant

v/s

Premadevi Radheshyam Pal  
G-17, M.K. Industrial Estate  
Sonawala Cross Road no.2  
Goregaon (E), Mumbai 400 063  
PAN - AMOPP4600K

..... Respondent

C.O. no.1, 2 and 3/Mum./2020  
(Arising out of ITA no.7502, 7503 and 7504/Mum./2018  
(Assessment Year : 2009-10, 2010-11 and 2011-12)

Premadevi Radheshyam Pal  
G-17, M.K. Industrial Estate  
Sonawala Cross Road no.2  
Goregaon (E), Mumbai 400 063  
PAN - AMOPP4600K

..... Cross Objector  
(Original Respondent)

v/s

Income Tax Officer  
Ward-31(2)(5), Mumbai

..... Respondent  
(Original Appellant)

Assessee by : Shri Pulindra M. Patel  
Revenue by : Shri R. Bhoopathi

Date of Hearing - 07.01.2020

Date of Order - 15.01.2020

**ORDER****PER BENCH**

The aforesaid appeals by the Revenue and cross objections by the assessee arise out of a common order dated 28<sup>th</sup> September 2018, passed by the learned Commissioner of Income Tax (Appeals)-42, Mumbai, pertaining to the assessment years 2009-10, 2010-11 and 2011-12.

**ITA no.7502/Mum./2018**  
**Revenue's Appeal for A.Y. 2009-10)**

**ITA no.7503/Mum./2018**  
**Revenue's Appeal for A.Y. 2010-11)**

**ITA no.7504/Mum./2018**  
**Revenue's Appeal for A.Y. 2011-12)**

2. The only common issue arising for consideration relates to the decision of the learned Commissioner (Appeals) in restricting the disallowance/addition on account of non-genuine purchases to 12.5%.

3. Brief facts, more or less common in all the assessment years are, the assessee, an individual, is stated to be engaged in the business of manufacturing of air pneumatics, fittings and accessories. For the assessment years under consideration, the assessee had filed his returns of income in the regular course which was initially processed under section 143(1) of the Income Tax Act, 1961 (for short "*the Act*"). Subsequently, on the basis of information received from the DGIT (Inv.), Mumbai, and the Sales Tax Department, Government of

Maharashtra, that the assessee is a beneficiary of accommodation entries by way of purchase bills provided by certain entities identified as hawala operators by the Sales Tax Department, Government of Maharashtra, the Assessing Officer re-opened the assessment in all these assessment years under dispute. During the assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of following purchases made in different assessment years through proper documentary evidences.

<i>A.Y. 2009-10</i>	<i>₹ 17,22,963</i>
<i>A.Y. 2010-11</i>	<i>₹ 9,12,976</i>
<i>A.Y. 2011-12</i>	<i>₹ 20,13,799</i>

4. Further, as observed by the Assessing Officer, to independently verify the genuineness of the aforesaid purchases, he issued notices under section 133(6) of the Act to the selling dealers. However, as alleged by the Assessing Officer, all such notices returned back unserved by the Postal Authorities. Further, after verifying the evidences furnished by the assessee, the Assessing Officer observed that though purchase bills, ledger extracts and Bank statements were furnished by the assessee, however, the assessee was unable to produce the concerned parties and also failed to furnish delivery challan, transport receipt, etc., to prove actual/physical delivery of goods. Thus, he ultimately concluded that the purchases made by the assessee are not genuine. However, he was of the view that the only profit element

embedded in such non-genuine purchases can be added to the income of the assessee. Accordingly, in assessment year 2009-10, he estimated the profit element embedded in non-genuine purchases @ 25% and added an amount of ₹ 4,30,741. Similarly, in the assessment year 2010-11, he estimated the profit element @ 21% on the non-genuine purchase and made addition of ₹ 1,91,725. Whereas, in the assessment year 2011-12, he estimated the profit element on non-genuine purchases @ 18% and made addition of ₹ 3,62,484. Challenging the additions made by the Assessing Officer, the assessee preferred appeals before the first appellate authority.

5. Learned Commissioner (Appeals), after considering the submissions of the assessee in the context of facts and material on record including the gross profit rate declared by the assessee, restricted the addition to 12.5% in the assessment years under consideration.

6. We have considered the rival submissions and perused the material on record. As could be seen from the facts on record, though, the Assessing Officer was not fully satisfied with the evidences furnished by the assessee in support of the disputed purchases, however, he has not found any adverse material with regard to the sales effected by the assessee. For that reason alone, the Assessing Officer has ultimately proceeded to estimate the profit element

embedded in the non-genuine purchases and added them to the income of the assessee. It is evident, the Assessing Officer has estimated the profit element @ 25% for the assessment year 2009-10, whereas, he has estimated such profit element at 21% and 18% in the assessment years 2010-11 and 2011-12 respectively. While deciding assessee's appeals contesting the aforesaid additions, learned Commissioner (Appeals) has estimated the profit element @ 12.5% in all the assessment years under consideration and restricted the addition to that extent. Therefore, the dispute in the present appeals is confined to the reasonable profit rate at which the additions can be made on account of non-genuine purchases. After considering the nature of business carried on by the assessee and all other relevant factors, we are of the view that the estimation of profit @ 12.5% on non-genuine purchase, as made by the learned Commissioner (Appeals), is reasonable and meets the ends of justice. Therefore, we do not find any valid reason to interfere with the decision of the learned Commissioner (Appeals) on the issue. Accordingly, the grounds raised by the Revenue in the present appeals being devoid of merit are dismissed.

7. In the result, appeals are dismissed.

**C.O. no.1, 2 & 3/Mum./2020**  
**for A.Y. 2009-10, 2010-11 & 2011-12)**

8. Insofar as the cross objections filed by the assessee are concerned, on a perusal of the same, we find that the grounds raised therein are merely in support of the orders passed by the learned Commissioner (Appeals). Therefore, in view of our decision, as aforesaid, upholding the orders passed by the learned Commissioner (Appeals) on the disputed issue, the cross objections filed by the assessee have become infructuous, hence, are dismissed.

9. In the result, all the appeals as well as cross objections are dismissed.

Order pronounced in the open Court on 15.01.2020

**Sd/-**  
**RAJESH KUMAR**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 15.01.2020**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
 Sr. Private Secretary

True Copy  
 By Order

Assistant Registrar  
 ITAT, Mumbai