

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

BEFORE SHRI R.C.SHARMA, AM & SHRI VIKAS AWASTHY, JM

**ITA No. 1008/Mum/2019
(Assessment Year: 2010-11)**

D.C.I.T., Circle-3, Thane, Room No. 02, 6 th Floor, Aashar IT Park, B-Wing, Wagle Industrial Estate, Road No. 16Z, Thane (W)-400604.	Vs.	M/s P S Auto Private Limited, A/57, Miniature Bulb Industries Limited, Opp PCP Chemicals, Wagle Industrial Estate, Thane(W)-400605..
PAN/GIR No.AABCP 6521 B		
(Appellant)	..	(Respondent)

Revenue by	Shri Amit Pratap Singh (DR)
Assessee by	Shri Jayant Bhatt & Shri Sanjiv Brahme (ARs)
Date of Hearing	10/02/2020
Date of Pronouncement	10/02/2020

आदेश / O R D E R

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

This is the appeal filed by the revenue against the order of the Id. CIT(A)-2, Thane dated 12/12/2018 for the A.Y. 2010-11 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. The only grievance of the revenue relates to upholding addition to the extent of 12.5% in respect of bogus purchases which was made by the A.O. at 100%.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in manufacturing and trading of automobile products. The A.O. got information from the Sales Tax Department regarding the assessee taking accommodation bill with regard to purchases without taking actual delivery of goods, accordingly, the A.O. reopened the assessment and thereafter entire alleged bogus purchases to the tune of Rs. 12,43,208/- was added in assessee's income.

4. By the impugned order, the Id. CIT(A) has restricted the addition to the extent of 12.5% after observing as under:

"9. I have considered the facts of the case and the submission of the appellant. The Hon'ble ITAT, Mumbai, in appellant's own case for AY 2009-10, in ITA No. 1244/Mum/2018 had restricted the disallowance to the extent of 12.5% of bogus purchases, inter-alia stating that:-

"..... If the ratio laid down by Hon'ble jurisdictional High Court in the aforesaid case of MIs Nikunj Eximp Enterprises Pvt. Ltd ((supra)) is analyzed with the facts of the present appeal, it is noted that the Ld Assessing Officer received from the Sales Tax Department with respect to bogus purchases made from various parties through bogus bills, the assessee is one of the beneficiary of such purchases. The assessee showed gross profit and net profit of Rs. 1,02,30,977/- and Rs. 15,30,192/-, respectively, on the gross purchases of Rs, 2.55 Crores. The assessee in spite of asking by the Id. Assessing Officer did not produce the necessary details and thus the Id. Assessing officer made addition under section 69C of the Act of the total purchases. On appeal before the Ld. Commissioner of Income Tax (Appeal), confirmed the addition. If the totality of facts and the

material available on record, in such type of cases, there is no option but to adopt the gross profit embedded therein, which can be added. The assessee has already declared GP @ 40% and NP @ 7.53%, thus, to plug the leakage of Revenue, I direct the Ld. Assessing Officer to make the addition @ 12.5% of such bogus purchases."

9.1 Considering the facts of case and in view of the decision of Hon'ble ITAT, SMC Bench, Mumbai, following the same parity of reasoning, the disallowance to the extent of 12.5% of bogus purchases, i.e. Rs. 1,55,401/- (12.5% of Rs. 12,43,208/-), is hereby sustained and balance disallowance of Rs. 10,87,807/- (Rs. 12,43,208— Rs. 1,55,401) is deleted. The ground of appeal, raised as above, is partly allowed."

5. Against the above order of the Id. CIT(A), the revenue is in appeal before the ITAT.

6. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that in assessee's own case for the immediate preceding year i.e. A.Y. 2009-10 in IRA No. 1244/Mum/2018, the Tribunal under the similar facts and circumstances has restricted the addition to the extent of 12.5%. While deciding the issue, the Id. CIT(A) has followed the order of the Tribunal and reduced the addition to the extent of 12.5% against the 100% made by the A.O. As facts and circumstances during the year under consideration are same and nothing was pointed out by the Id DR so as to persuade us to deviate from the decision of the Tribunal for the A.Y. 2009-10, we do not find any reason to interfere

in the order of the Id. CIT(A) for restricting addition to the extent of 12.5%. Hence, we uphold the same.

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 10th February, 2020.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

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

Mumbai; Dated 10/02/2020

*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