

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

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

**ITA No. 5639 & 5640/Mum/2019  
(Assessment Year: 2009-10 & 2010-11)**

Magan V Prajapati, Room No. 15, 2 <sup>nd</sup> Floor, Kamal Niwas 39/41, Bhandari Street, Mumbai-400004.	Vs.	I.T.O.-19(2)(3) Matru Mandir Building, 1 <sup>st</sup> & 2 <sup>nd</sup> Floor, Nana Chowk, Bhatia Hospital lane, Javji Dadaji Marg, Grant Road West, Mumbai-400007.
<b>PAN/GIR No.ANWPP 7146 B</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Bharat Kumar (AR)
Revenue by	Shri Amit Pratap Singh (DR)
<b>Date of Hearing</b>	<b>10/02/2020</b>
<b>Date of Pronouncement</b>	<b>10/02/2020</b>

**आदेश / O R D E R**

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

These are the appeals filed by the assessee against the separate ex parte orders of the Id. CIT(A)-30, Mumbai dated 26/06/2019 and 25/06/2019 for the A.Y. 2009-10 and 2010-11 respectively 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. Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in trading of ferrous and non-ferrous metals. The A.O. got information regarding assessee involved in taking accommodation bill with regard to purchases without delivery of

the goods. After making enquiry, the A.O. added 12.5% of such bogus purchases in assessee's income. Against the order of the A.O., the assessee approached to the Id. CIT(A) who by passing ex parte order has dismissed the appeals of the assessee and also enhanced the addition to the extent of 100% of alleged bogus purchases.

3. In the appeal order, the Id. CIT(A) has mentioned that various notices were issued to the assessee, however, there was no compliance by the assessee. Thereafter notices of enhancement were issued but there was no compliance. From the order of the Id. CIT(A), it appears that he has discussed various judicial pronouncements including the decision of the Hon'ble Bombay High Court in the case of M/s Mohommad Haji Adam & Co. wherein the Hon'ble High Court has upheld the order of the Tribunal for making addition only to the extent of differences between the gross profit offered in case of normal purchases vis a vis bogus purchases. However, the Id. CIT(A) did not accept the decision of the Hon'ble Bombay High Court on the plea that this decision is not based on an argument with respect of Section 37(1) of the Indian Evidence Act. Accordingly, the Id. CIT(A) has observed that *"with utmost respect, this decision, though no cited by the appellant, cannot be relied upon"*.

4. The Id. CIT(A) has not given any justification for enhancement of addition from 12.5% to 100%, therefore, in the substantial interest of justice, we set aside the ex parte order of the Id. CIT(A) and restore the

matter back to the file of Id. CIT(A) for deciding the matter afresh on merit after providing due and reasonable opportunity of hearing to the assessee.

5. Since the facts and circumstances of both the years are same, therefore, by following the reasoning given in the appeal for the A.Y. 2009-10, I also restore the matter for the A.Y. 2010-11 to the file of the Id. CIT(A).

6. In the result, both the appeals of the assessee are allowed for statistical purposes only.

Order pronounced in the open court on 10<sup>th</sup> 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**