



ITA No.5715-16/Mum/2018

Mafaram J. Choudhary

Assessment Years:2009-10 &amp; 2012-13

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“D” BENCH, MUMBAI**

**माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपील सं./ I.T.A. No.5715/Mum/2018  
 (निर्धारण वर्ष / Assessment Year: 2009-10)

&

आयकरअपील सं./ I.T.A. No.5716/Mum/2018  
 (निर्धारण वर्ष / Assessment Year: 2012-13)

<b>Income Tax Officer -19(2)(3)</b> Room No.218, Matru Mandir, Tardeo Road, Grant Road, Mumbai-400 007.	<b>बनाम/ Vs.</b>	<b>Mr. Mafaram J. Choudhary</b> M/s. Guru Steel Engg. Co. Ground Floor, 24/28 Abbas Mansion 4 <sup>th</sup> Kumbharwada Mumbai-400 004.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AEEPC-8323-A</b>		
(आपीलकर्ता/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	None
<b>Revenue by</b>	:	Ms. Jyoti Lakshmi Nayak-Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	11/02/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	11/02/2020

**आदेश / ORDER**

**Per Bench**

1.1 Aforesaid appeals by revenue for Assessment Years [in short referred to as ‘AY’] 2009-10 & 2012-13 contest common order of Ld.



Commissioner of Income-Tax (Appeals)-30, Mumbai, [in short referred to as 'CIT(A)'], order dated 16/07/2018. The grounds raised for AY 2009-10 read as under: -

1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the net addition on account of bogus purchases to the extent of 12.5% of the addition made by AO on account of bogus purchases?"
2. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in not considering the order of Hon'ble Supreme Court in the case of N.K.Protein Ltd. Dated 16-01-2017, which is on the similar issue of bogus purchases and when the apex court order was already the law of the land when the Ld.CIT(A) has pronounced its order on 09-07-2018?"
3. The appellant prays that the order of the Ld.CIT(A) on the above grounds be set aside and that of the AO be restored.

1.2 None has appeared for assessee and no valid adjournment application is on record. Left with no option, the appeals were proceeded with ex-parte qua the assessee in view of the fact that the sole subject matter of appeal was estimated additions on account of *alleged bogus purchases*.

1.3 We have carefully heard arguments advanced by Ld. DR who pleaded for confirmation of full additions as made by Ld. AO. After considering the same, our adjudication to the appeals would be as given in the succeeding paragraphs.

2.1 Facts as emanating from case records for AY 2009-10 are that the assessee being resident individual stated to be engaged in trading of metals under proprietorship concern namely M/s Guru Steel Engg. Co. was assessed for year under consideration u/s 143(3) r.w.s. 147 on 24/03/2015 wherein the income of the assessee was determined at Rs.79.28 Lacs after sole addition of Rs.74.80 Lacs on account of alleged



bogus purchases as against assessed income of Rs.4.48 Lacs u/s 143(3).

2.2 Pursuant to receipt of certain information from DGIT (Inv.) / Sales Tax Department, Maharashtra, it transpired that the assessee availed accommodation bills aggregating to Rs.74.80 Lacs from 7 entities, the details of which have already been extracted in para-2 of quantum assessment order. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on 13/03/2014 which was followed by statutory notices wherein the assessee was directed to file requisite details and substantiate purchase transactions.

2.3 To verify the transactions, notices u/s 133(6) were issued to these suppliers, however, in most of the cases, the notices were returned back undelivered by postal authorities. The assessee failed to produce any of the suppliers to confirm the transactions. However, in defense, the assessee produced ledger extracts, copies of purchase bills and bank statements evidencing payment through banking channels. Therefore, finding that the assessee failed to discharge the primary onus of proving the purchase transactions, Ld. AO disallowed the said purchases and added the same to the income of the assessee.

3. Before Ld. CIT(A), the assessee, *inter-alia*, submitted that the purchases were genuine since corresponding sales were accepted. It was also submitted that gross profit rate on disputed purchases was much higher than overall gross profit rate reflected by the assessee. The Ld. CIT(A), after considering factual matrix as well assessee's submissions in the light of various judicial pronouncements, estimated the addition of 12.5% against these purchases. Reliance was placed on



the decision of Hon'ble Gujarat High Court in **CIT V/s Simit P.Sheth (356 ITR 451)** while making such addition. Aggrieved, the revenue is under further appeal before us.

4. Upon due consideration, we are of the opinion that there could be no sale without actual purchase of material particularly when the assessee was into trading activities. The sales turnover has not been disputed / disturbed by the revenue. The assessee was in possession of primary purchase documents and the payments to the suppliers were through banking channels. However, at the same time, the assessee failed to produce any of the suppliers to confirm the transactions. Notices issued u/s 133(6) did not elicit satisfactory response and the assessee failed to discharge the primary onus of substantiating the purchase transactions. The stated factual matrix, in our considered opinion, would make it a fit case to make estimated additions to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey / unorganized market and undue benefit of VAT against such bogus purchases, which lower authorities have rightly done so. Therefore, finding the estimation of 12.5% to be quite fair and reasonable, we decline to interfere in the impugned order. The appeal stands dismissed.

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5. Facts are pari-materia the same in this year. The assessee was similarly saddled with additions of non-genuine purchases aggregating to Rs.179.74 Lacs. The Ld. CIT(A), following its decision in AY 2009-10, estimated the additions @12.5%. The impugned order is common order



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for both the years. Aggrieved, the revenue is under further appeal before us.

6. Since facts are pari-materia the same, our decision for AY 2009-10 shall *mutatis-mutandis* apply to this year also. Resultantly, the grounds raised by revenue, in this regard, stand dismissed.

### **Conclusion**

7. Both the appeal stands dismissed.

*Order pronounced in the open court on 11<sup>th</sup> February, 2020.*

**Sd/-**  
**(Amarjit Singh)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**  
**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 11/02/2020  
Sr.PS, Jaisy Varghese

### **आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**