

**IN THE INCOME TAX APPELLATE TRIBUNAL “F”
BENCH, MUMBAI**

**BEFORE SHRI PAWAN SINGH, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 4402, 4403 & 4404/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2009-10 to 2011-12)

Smt. Vijalaxmi Ramesh Upadhyay, 36. Gr. Floor, Sagar Pallazio, Opp-Sudarshan Hotel, Andheri Kurla Road, Sakinaka, Mumbai-400 051	बनाम/ Vs.	ACIT-21(3), Pratyakshkar Bhavan, C- 11, 5 th floor, Bandra Kurla Complex, Mumbai-400 051
स्थायीलेखासं./जीआइआरसं./PAN No. AAIPU8085F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Satish Modi, AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Mrs. Kavita Kaushal, DR

सुनवाईकीतारीख/ Date of Hearing	:	05.12.2019
घोषणाकीतारीख / Date of Pronouncement	:	26.02.2020

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

The present three appeals have been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-38, Mumbai, dated 12.02.18 for AY 2009-10 to 2011-12.

2. Since the issues raised in these appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order. Firstly, we are taking ITA No. 4402Mum/2018 for AY 2009-10 filed by the assessee.

3. The brief facts of the case are that assessee is a manufacturer of trading and manufacturing of refractories, products from Graphite, M.S. Plates, M.S. Scrap, CRC sheet, Colour coated sheet, etc. Based on the information received from the sales tax Department that assessee is indulged in bogus purchases from the two parties i.e. M/s Shantinath Corporation and M/s Surachi Multitrade Pvt. Ltd as these two parties are involved in supplying bogus bills. Accordingly, AO issued show cause notice to the assessee to prove the genuineness of the

purchases and why it should not be added as their income. In response, assessee submitted the relevant information as called for. After considering the submission of assessee, AO rejected the contentions of the assessee and by relying various case law, disallowed 100% of the alleged bogus purchases as income of the assessee.

4. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) confirmed the addition made by AO and dismissed the appeal of the assessee.

5. Now before us, the assessee has preferred appeal by raising the grounds of appeal as under:-

1. On the facts and in the circumstances of the case and in law the CIT(A) erred in upholding the order of the Assessing Officer in reopening the assessment under section 147 r.w.s. 148 of the Act, without appreciating the facts of the case.

2. On the facts and in the circumstances of the case and in law the CIT(A) erred in confirming the order of the Assessing Officer in making addition of Rs.

37,97,895/- on account of alleged bogus purchase without appreciating the facts of the case.

WITHOUT PREJUDICE

3. On the facts and in the circumstances of the case and in law the CIT(A) ought to have held that only profit element on the alleged bogus purchase could be assessed as income of the appellant as the sales have been accepted and ought to have directed the Assessing Officer to assess certain percentage of the alleged bogus purchase as income of the appellant.

4. The appellant craves leave to add/alter/modify any/all grounds of appeal.

6. Before us, Ld. AR appearing on behalf of the assessee submitted that assessee is a trader and manufacturer of refractories, products from Graphite, M.S. Plates, M.S. Scrap, CRC sheet, Colour coated sheet, etc. He further submitted that AO has not rejected the books of accounts and just because parties were not produced before him and AO treated the above purchases as bogus, even though assessee has paid VAT of 4% and also declared gross profit as per chart given below:-

Asst. Year	Working	Ratio	Purchases disallowed	Working	Ratio
2009-10	1,03,77,122 x 100	19.17%	37,97,895	1,41,75,017 x 100	26.18%
	5,41,45,622			5,41,45,622	
2010-11	1,20,20,846 x 100	12.24%	3,89,18,969	5,09,39,815 x 100	51.88%
	9,81,90,237			9,81,90,237	
2011-12	1,09,62,540 x 100	11.40%	2,62,26,959	3,71,89,499 x 100	38.69%
	9,61,26,641			9,61,26,641	

7. Ld. AR submitted that the above chart shows that assessee has declared reasonable gross profit and when the purchases were disallowed, the GP ratio increased abnormally and it is not as per the normal business profit. He further submitted that AO has not doubted the sales declared by the assessee and assessee is in the business of trading & manufacturing and assessee has utilized the material purchase from these parties.

8. On the other hand, Ld. DR relied on the orders passed by the revenue authorities.

9. We have heard counsels for both the parties and we have also perused the material placed on record as well as the orders

passed by revenue authorities. We notice that revenue authorities accepted the sales declared by the assessee and doubted only the purchase made by the assessee. The revenue authorities have not considered nor verified the quantity details. In the similar situation, we come across the decision of the Coordinate Bench of this Tribunal in the case of **Sunil B. Vorani (HUF) vrs ITO (ITA No. 1337/Mum/2017)**, wherein it was held as under:-

Be that as it may, after evaluating the entire facts, grounds raised by the assessee, perusal of the records and judgments relied by the parties, we find that Ld. CIT(A) has upheld the findings of AO in estimating the profit @ 25% of the total sales. In our considered view, considering the facts of the present case and while relying upon the following judgments:- 1) CIT vs Bholanath Poly Fab Ltd. (2013) 355 ITR 290 (Guj). (HC), 2. CIT v Simit D, Sheth (2013) 356 ITR 451 (Guj)-(HC) and 3. CIT vs. Sanjay Oil Cake Industries (2009) 316 ITR 274 (Guj) (1C) and taking into consideration the facts of the present case, and also considering the order passed by the Coordinate Bench of SMC in assessee's own case and to account for the profit element embedded in these purchase transactions to factorize profit earned by assessee

*against purchase of material in the grey market and undue benefit of VAT against bogus purchases, we are of the considered view that upholding the additions @ 25% of the sales by Ld. CIT(A) is unreasonable. The ends of justice would be met in case the additions are restricted @ 12.5 % of purchase amount of Rs. 2,26,39,391/-. Consequently, orders passed by Ld. CIT(A) are set aside and hence we direct the AO to restrict the additions to the extent of 12.5% of the bogus purchases of Rs. 2,26,39,391/-. made from the parties. Accordingly, these grounds raised by the assessee are **partly allowed**.*

10. Therefore, respectfully following the above decision of ITAT which is applicable *mutatis mutandis* in the present case, we are inclined to restrict the disallowance @ 12.5%. Therefore, we direct the AO to restrict the disallowance @ 12.5% of the bogus purchases. Accordingly, we **allow** the alternate plea of the assessee in ground no. 3 of the appeal. Other grounds raised by the assessee are accordingly **dismissed**. Hence, the appeal of the assessee is **partly allowed**.

11. Since the facts in other appeals filed by the assessee are similar to the facts of above appeal i.e. ITA No.

4402/Mum/2018, therefore, the grounds raised in these appeals are also **partly allowed.**

12. In the net result, all the appeal filed by the assessee stands **partly allowed.**

Order pronounced in the open court on 26th Feb 2020.

Sd/- (Pawan Singh) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : Sr.PS. Dhananjay	Sd/- (S. Rifaur Rahman) लेखासदस्य / Accountant Member 26.02.2020
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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/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai