

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

BEFORE SHRI R.C.SHARMA, AM & SHRI PAWAN SINGH, JM

**ITA No. 1233 & 1234/Mum/2019
(Assessment Year: 2009-10 & 2010-11)**

Shri Rajesh K. Shah (HUF), 401, Amar Smruti, 60 Feet Road, R.B. Mehta Marg, Ghatkopar East, Mumbai- 400077.	Vs.	I.T.O.-27(3)(1), Room No.1, 3 rd Floor, Tower No. 6, Railway Commercial Complex, Vashi, Navi Mumbai- 400703.
PAN/GIR No. AAEHR 8886 D		
(Appellant)	..	(Respondent)

Assessee by	Mrs. Ruchi M. Rathod (AR)
Revenue by	Shri Mohammed Rizwan (Addl.CIT)
Date of Hearing	03/03/2020
Date of Pronouncement	04/03/2020

आदेश / O R D E R

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

These are the appeals filed by the assessee against the separate orders of the Id. CIT(A)-25, Mumbai dated 10/12/2018 for the A.Y. 2009-10 & 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. Common grievance of the assessee in both the years relate to upholding addition of 12.5% in respect of alleged bogus purchases made by the A.O..

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in trading of industrial goods,

hardware tools, bearing and iron and steel. On getting information from the sales tax department regarding assessee involved in taking accommodation bill of purchases, the A.O. reopened the assessment and in the reassessment proceedings, the A.O. added 12.5% of alleged bogus purchases in assessee's income. By the impugned order, the Id. CIT(A) confirmed the action of the A.O. against which the assessee is in further appeal before the ITAT.

4. At the outset, the Id AR of the assessee placed on record the order of the Tribunal in assessee's own case for the A.Y. 2011-12 wherein under similar facts and circumstances, the addition on account of bogus purchases was upheld by the Tribunal @ 5%. The precise observation of the Tribunal was as under:

"7. Considering the rival contentions and material placed on record, we notice that ITAT Mumbai Bench in the case of Heeramanek & Son Vrs. ACIT passed in ITA No. 1862/Mum/2017, wherein it was held as under:-

5. So far as the quantum of additions are concerned, we are of the considered opinion that the assessee was engaged in trading activities, which could not be carried out without actual purchase of material. The turnover achieved by the assessee has not been disputed or disturbed by the revenue and the payments were through banking channels. The assessee was in possession of primary purchase documents and was able to reconcile the quantitative details. However, at the same time, the stated purchases were under grave doubt since the assessee could not produce any of the party to confirm the transactions and the

information received from investigation wing revealed that all the suppliers were engaged in carrying out only paper transactions without actual delivery of material. The complete onus to prove the purchases conclusively was on assessee, which has remained undischarged. In such a scenario, the addition, which could be made, was to account for profit element embedded in these purchase transactions to factorize for profit element earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against alleged bogus purchases, which lower authorities have rightly done. However, considering GP rate of 10.59% already reflected by the assessee as well as VAT rate applicable to the goods being dealt with by the assessee, we find the estimation to be on the higher side and therefore, we restrict the same to 3% of alleged bogus purchases of Rs.1,87,08,961/-. The same comes to Rs.5,61,269/-. The order of Ld. AO stands modified to that extent. The Ld. AO is directed to re-compute the income of the assessee in terms of our above order.

8. *Therefore, respectfully following the aforesaid decision, we notice that since assessee has already declared GP ratio and the products which falls in the slab rate of 4%, which is placed on record. Since the case are different from case to case basis and there is no dispute that assessee has paid VAT to the alleged suppliers of material, however, there is no record to complement that the VAT was actually paid to Govt. account. Therefore, we are inclined to estimate the income @ 5%. Accordingly, we direct the AO to estimate the income of the assessee @ 5% of the alleged purchases.”*

5. It was further argued by the Id AR that in the A.Y. 2011-12 so decided by the Tribunal, the assessee was not assessed to VAT, therefore, addition was made @ 5% assuming that the assessee has not

paid any VAT. As per the Id AR during both the years under consideration, the assessee was assessed to VAT, therefore, addition of 5% should be reduced by the VAT actually paid by the assessee. Our attention was also invited to the copy of the assessment order under MVAT Act and the copy of tax challan paid under MVAT Act.

6. On the other hand, the Id DR has relied on the orders of the authorities below.

7. We have considered the rival contentions and carefully gone through the orders of the authorities below and found that the issue with regard to bogus purchases in the preceding assessment year 2011-12 was decided by the Tribunal wherein addition to the extent of 5% was upheld. However, in this years, the assessee was not assessed to MVAT. However, during both the years under consideration, the assessee was assessed to MVAT, therefore amount of MVAT paid by the assessee deserves to be reduced from the addition made in respect of bogus purchases. Respectfully following the order of the Tribunal in assessee's own case, we direct the A.O. to restrict the addition on account of bogus purchases to the extent of 5%. The A.O. is further directed to verify the amount of MVAT paid by the assessee during both the years under consideration and to give credit of such amount while computing the addition. Meaning thereby the addition of 5% should be further reduced

by the amount of MVAT paid by the assessee in both the years under consideration.

8. In the result, both the appeals of the assessee are allowed in part.

Order pronounced in the open court on 04th March, 2020.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

Mumbai; Dated 04/ 03/2020

*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