



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

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER &
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA NO.6492/MUM/2017 : A.Y : 2010-11
ITA NO.6493/Mum/2017 A.Y: 2011-12**

**Shri Anil Jagannath Tiwari vs. Income Tax Officer –
Proprietor M/s. Anil & Ward2(1), Kalyan
Brothers
Ground Floor, Kulgaon
Badlapur(E)-421503**

PAN NO: ACGPT4287Q

**Assessee by : Shri Paresh C Shaparia
Revenue by : Shri Sarishchandra Rajore**

**Date of Hearing : 26/02/2020
Date of Pronouncement : 02/03/2020**

ORDER

PER R.C. SHARMA, ACCOUNTANT MEMBER

These are the appeals filed by the assessee against the order of CIT(A)-3, Mumbai dated 05/07/2017 & 27/03/2017 for A.Y. 2010-11 & 2011-12, in the matter of order passed u/s.143(3) & 144 r.w.s. 147 of the Income Tax Act, 1961.

2. Common grievance of assessee in both the years relate to upholding addition on account of bogus purchases.

3. Rival contentions have been heard and record perused. Facts in brief are that assessee is engaged in trading in steel material and MS material. During the course of scrutiny assessment / re-assessment

proceedings, AO found that assessee has taken accommodation bill of the purchases, accordingly, he added entire such purchases in assessee's income.

4. By the impugned order, CIT(A) has confirmed the action of the AO against which assessee is in further appeal before us.

5. Ld. AR placed on record the order of the Tribunal in assessee's own case for the immediately preceding A.Y.2009-10, wherein under similar facts and circumstances, addition was restricted to 8% of the alleged bogus purchases.

6. We have gone through the orders of the authorities below and found that AO has added entire purchases in assessee's income. However, before CIT(A), assessee could not appear because his authorised representative was suffering from Cancer. Relevant medical certificates were placed on record to justify non-appearance before CIT(A). So far as merit of addition is concerned, the Tribunal have decided exactly similar issue in assessee's own case for the immediately preceding A.Y.2009-10, wherein Tribunal vide its order dated 27/02/2019 in ITA No.6491/Mum/2017 held as under:-

11. We have heard' both' the parties, perused the materials available on Record and gone through the orders of authorities below, The assessee claims to have purchased goods from 11 parties as listed by the AO in his assessment amounting to Rs.1,11,14,941, but could not substantiate its claim by filing necessary evidence before the lower authorities. Further, the investigation carried out by the sales-tax department also proves the fact that parties were Involved in providing accommodation entries without actual delivery of goods. Further, the parties failed to file necessary details sought by the AO by Issuing 133(6) notices. From the above, it is very clear that the assessee has failed to prove, the purchases to the satisfaction of the AO. Accordingly, we reject the arguments of the

assessee that purchases from the above parties were genuine, which are supported by necessary evidence.

At the same time, it is difficult to accept the arguments of the Ld. DR that the purchases from the above parties are not supported by any evidence because the AO has not carried out any further investigation in the light of facts brought out by the MVAT department to ascertain the true character of transactions between the parties. Mere issuing notice u/s 133(6) is not sufficient enough to hold purchases from those parties as non genuine without carrying out any further enquiries. Therefore, we are of the considered view that the AO also failed to make out a case of unexplained expenditure which could be brought to tax u/s 69C of the Income-tax Act, 1961. Under these facts, to resolve the dispute, what is to be done is to estimate a reasonable amount of profit on such alleged bogus purchases. In fact, the Ld.AR for the assessee has accepted for estimation of reasonable profit. The co-ordinate bench of Mumbai Tribunal in a number of cases have taken a consistent view depending upon facts of each case and directed the AO to estimate net profit of 5 to 12.5% on alleged Bogus purchases. In this case the assessee is involved in trading in iron & steel where the profit margin varies from 3% to 8%. Since, the assessee failed to file necessary evidences to prove the purchases, we are of the considered view that in order to resolve the dispute, a profit margin of 8% would meet the ends of justice. Accordingly, we direct the AO to estimate 8% profit on alleged bogus purchases.

12. *In the result, appeal filed by the assessee is partly allowed.*

7. We had carefully gone through the orders of the Tribunal and found that exactly under similar facts and circumstances, the Tribunal have restricted addition to the extent of profit margin of 8% on the alleged bogus purchases. As the facts and circumstances during both the years under consideration are perimateria, respectfully following the order of the Tribunal in assessee's own case as stated above, we direct AO to restrict addition to the extent of 8% of alleged bogus purchases.

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

Order pronounced in the open court on this 02/03/2020.

**Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER**

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

Mumbai; Dated 02/03//2020
Karuna Sr.PS

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