



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

ITA no.584/Mum./2019  
(Assessment Year : 2011-12)

Asstt. Commissioner of Income Tax  
Circle-17(2), Mumbai

..... Appellant

v/s

Shri Jagat Uttamchand Shah  
Jagat Enterprises, 504, 5<sup>th</sup> Floor  
Shraddha Residency  
Chandravarkar Road, Borivali (W)  
Mumbai 400 092PAN – AACPS9041H

..... Respondent

Revenue by : Shri Saurabh Deshpande  
Assessee by : None

Date of Hearing – 03.02.2020

Date of Order – 04.03.2020

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The captioned appeal has been filed by the Revenue challenging the order dated 6<sup>th</sup> November 2018, passed by the learned Commissioner of Income Tax (Appeals)-56, Mumbai, pertaining to the assessment year 2011-120.

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. There is no application

seeking adjournment either. Accordingly, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. The dispute in the present appeal is confined to part relief granted by learned Commissioner (Appeals) in the matter of addition made on account of non-genuine purchases.

4. Brief facts are, the assessee, an individual, is an importer and re-seller of bearing, hardware and industrial suppliers. For the assessment year under consideration, the assessee filed his return of income on 4<sup>th</sup> July 2011, declaring income of ₹ 10,60,012. The return of income filed by the assessee was initially processed under section 143(1) of the Act. Subsequently, on the basis of information received from the Sales Tax Department, Mumbai, through office of the DGIT (Inv.), Mumbai, that purchases worth ₹98,79,819, claimed to have been made during the year from four entities are non-genuine, the Assessing Officer re-opened the assessment under section 147 of the Act. In the course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases through supporting evidences. Though, the assessee furnished purchase bills and some other documentary evidences to prove the genuineness of purchases, however, the Assessing Officer was not

convinced with them and ultimately concluded that the purchases made by the assessee are non-genuine. However, ultimately he restricted the disallowance to 12.5% of the alleged non-genuine purchase and made an addition of ₹ 12,34,977. The assessee challenged the aforesaid addition before the first appellate authority.

5. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) reduced the addition to 7% of the non-genuine purchases.

6. We have considered the submissions of learned Departmental Representative and perused the material on record. As could be seen, though, the Assessing Officer has held the disputed purchases as non-genuine, however, instead of disallowing the entire purchases, he has made disallowed 12.5% of such purchases which implies that the Assessing Officer only doubts the source of such purchases. Looking at the gross profit rate declared by the assessee @ 18.18%, learned Commissioner (Appeals) has restricted the disallowance to 7% of the non-genuine purchases. Even, further addition @ 7% actually hikes the gross profit rate to more than 25%. This, in our view, is more than enough to take care of leakage of revenue, if any, on account of purchases having been made from undeclared source. Therefore, in our considered opinion, the aforesaid decision of learned Commissioner (Appeals) is just and reasonable, hence, does not call

for any interference from us. Accordingly, we uphold the order of the learned Commissioner (Appeals) on the issue by dismissing the ground raised by the Revenue.

7. In the result, appeal is dismissed.

Order pronounced in the open Court on 04.03.2020

**Sd/-**  
**G. MANJUNATHA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 04.03.2020**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai