

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 1184/MUM/2019 (A.Y: 2009-10)

Sawalchand B. Sanghvi 72, Bhavnagari Building Nanubhai Desai Road Girgaum, Mumbai – 400 004 PAN: ABFPS0172B	v.	Income Tax Officer Ward – 19(3)(2) Matru Mandir, Mumbai
(Appellant)		(Respondent)

Assessee by : **Shri H.A. Shah**
Department by : **Shri Kiran Unavekar**

Date of Hearing : **27.02.2020**
Date of Pronouncement : **13.03.2020**

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 30, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 10.09.2018 for the Assessment Year 2009-10.
2. Assessee challenged the order of the Ld.CIT(A) in sustaining the addition made by the Assessing Officer towards unexplained investment in respect of bogus purchases of ₹.17,55,675/.

3. Briefly stated the facts are that, the assessee an individual engaged in the business of supplier of Ferrous and non-Ferrous metals, iron, steels etc., filed return of income on 27.09.2009 declaring income of ₹.2,42,751/-. Return was processed u/s. 143(1) of the Act and subsequently reopened by issue of notice on 27.03.2014 u/s. 148 of the Act based on the information received from the DGIT (Inv) Mumbai, stating that assessee has availed accommodation entries from various dealers without purchase of any materials from them. In the course of re-assessment proceedings assessee was required to prove the genuineness of the purchases made from five parties as mentioned in the Assessment Order. In response to the notice, assessee failed to produce the parties before the Assessing Officer and could not furnish the documents as sought for. Accordingly, Assessing Officer treated the purchases as non-genuine and he was of the opinion that assessee had obtained only accommodation entries without there being any transportation of materials and the assessee might have made purchases in the gray market. The Assessing Officer treated purchases of ₹.17,55,675/- as non-genuine and added to the income of the assessee. The Ld.CIT(A) sustained the addition as made by the Assessing Officer as none appeared before the Ld.CIT(A) to prosecute the case of the assessee.

4. Before us, the Ld. Counsel for the assessee reiterated the submissions made before the lower authorities and the Ld. DR vehemently supported the orders of the authorities below.

5. We have heard the rival submissions, perused the orders of the authorities below. It is not in dispute that sales have been accepted as genuine from out of these purchases. When the sales have been accepted as genuine the entire purchases cannot be treated as non-genuine. The Hon'ble Gujarat High Court in the case of Bholanath Polyfab Pvt. Ltd [355 ITR 290] held that when the assessee made purchases and sold the finished goods as a natural corollary not the entire amount covered under such purchases would be subject to tax but only the profit element embedded therein. Similar view has been taken by the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Seth [38 taxman.com 385]. Simply because the parties were not produced the entire purchases cannot be added as held by the Bombay High Court in the case of CIT v. Nikunj Eximp [216 Taxman.com 171]. However, at the same time keeping in view the nature of business of the assessee and the fact that the assessee is making some local purchases without any transportation bills, lorry receipts etc, the possibility of making purchases in gray market on cash cannot be ruled out. Taking the totality of facts and circumstances into consideration and the nature of business carried

on by the assessee we direct the Assessing Officer to restrict the disallowance/addition to 4% of the bogus purchases. Accordingly, we direct the Assessing Officer to restrict the disallowance of purchases to 4% and compute the income accordingly.

6. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on the 13th March, 2020

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai / Dated 13/03/2020
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum