

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**ITA NOS. 7014 & 7015/MUM/2018  
(A.Ys: 2010-11 & 2011-12)**

Income Tax Officer Ward – 1(4) Room No. 11, 6 <sup>th</sup> Floor, B-Wing Wagale Industrial Estate Thane(w), 400 604	v.	Shri Girijashankar Bishwamber Choudhary Prop: JAIS Enterprises 6/602, Vasant Lawns, Pokharan Road No. 2 Near Jupiter Hospital Majiwada, Thane – 400 601  <b>PAN: ADDPC6827B</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**CO.NO. 279 & 280/MUM/2019  
[ARISING OUT OF ITA NOS. 7014 & 7015/MUM/2018  
(A.Ys: 2010-11 & 2011-12)]**

Shri Girijashankar Bishwamber Choudhary Prop: Jais Enterprises 6/602, Vasant Lawns, Pokharan Road No. 2 Near Jupiter Hosital, Majiwada, Thane – 400 601  <b>PAN: ADDPC6827B</b>	v.	Income Tax Officer Ward – 1(4) Room No. 11, 6 <sup>th</sup> Floor, B-Wing, Wagale Industrial Estate Thane(w), 400 604
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by** : **Shri S.L. Jain**  
**Department by** : **Shri R. Bhoopathi**  
  
**Date of Hearing** : **12.02.2020**  
**Date of Pronouncement** : **29.09.2020**

## **ORDER**

### **PER C.N. PRASAD (JM)**

1. This appeal and cross objection are filed by the Revenue and assessee respectively against common order of the Learned Commissioner of Income Tax (Appeals)-1, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.09.2018 for the Assessment Years A.Y. 2010-11 & A.Y. 2011-12.

2. Revenue in its appeals has raised the following common grounds: -

*"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not appreciating the law correctly that once the purchases are unverifiable/not genuine/bogus, the same should have been disallowed in entirety?"*

*2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by not appreciating the fact that the assessee could not establish the genuineness of the purchases from the non-existent vendors?"*

*3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by not appreciating the fact that the onus to justify the claim of expenses is on the assessee and the same has failed to discharge it in relation to the purchases made from the non-existent vendors?"*

*4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by ignoring, the fact that the assessee could not substantiate its claim of purchases from non-existent vendors by means of relevant supporting documents related to movement and delivery of goods, stock register, etc. to arrive at disallowance lower than 100% of the purchases from the non-existent vendors?"*

*5. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not appreciating the law correctly that once the purchases are unverifiable / not genuine / bogus, the same should have been disallowed in entirety, particularly*

*in view of the ratio of the decision of the Hon'ble Gujarat High Court in Tax Appeal No. 242 of 2003 dated 20/06/2016 in the case of N.K. Proteins Ltd. against which the SLP was dismissed by the Hon'ble Apex Court and also decision of Hon'ble Supreme Court in case of Kanchwala Gems V/s JCIT 288 ITR 10 (SC?.*

6. *The appellant craves leave to add, amend, alter or delete any ground of appeal.*

7. *The order of the CIT(A) may be vacated and that of the assessing officer may be restored."*

3. At the time of hearing, Authorized Representative of the assessee submitted that tax effect on the issue in the present appeals is below ₹.50 Lacs and in view of the CBDT Circular No. 17/2019 dated 08.08.2019 in F.No.279/Misc.142/2007-ITJ (Pt), the appeals of the Revenue are not maintainable.

4. Departmental Representative also agreed with the above submission of the Authorized Representative of the assessee.

5. We have heard the submissions and perused the grounds of appeal in these appeals. We find that the tax effect in the revenue appeals is less than ₹.50 Lakhs and therefore the appeals of the Revenue are not maintainable on account of low tax effect in view of the CBDT Circular No. 17/2019 dated 08.08.2019. Hence these appeals are dismissed.

6. Coming to the cross objections filed by the assessee, assessee challenged the order of the Ld.CIT(A) in restricting the disallowance to 25% of purchases of ₹.12,42,917/- and ₹.6,05,185/ for A.Y. 2010-11 & A.Y. 2011-12 respectively, as against the 100% of purchases disallowed as non-genuine/bogus by the Assessing Officer.

7. Briefly stated the facts are that, the assessee an individual engaged in business of job work, filed return of income on 14.10.2010 and 29.09.2011 declaring income of ₹.11,26,340/ and ₹.9,99,730/- for A.Y.2010-11 and A.Y. 2011-12 respectively. Returns were processed u/s.143(1) of the Act and subsequently reopened by issue of notice 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 the 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. Assessing Officer observed that the notice issued u/s.133(6) of the Act to the parties were returned unserved with a remark "left/Not Known" and the assessee did not produced the parties before the Assessing Officer. The Assessing Officer treated purchases of ₹.12,42,917/- and ₹.6,05,185/ for A.Y.2010-11 & A.Y. 2011-12 respectively, as non-genuine and added to the income of the assessee. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee restricted the disallowance to the extent 25% of the non-genuine purchases.

8. Before us, Ld. Counsel for the assessee submitted that the disallowance restricted by the Ld.CIT(A) is on higher side and requested for scaling down of disallowance. Ld. DR vehemently supported the orders of the authorities below.

9. 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 [356 ITR 451]. 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 following the decision of the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Seth (supra), we direct the Assessing Officer to restrict the disallowance/addition to 12.5% of the bogus purchases. Accordingly, we direct the Assessing Officer to restrict the disallowance of purchases to 12.5% for both the Assessment Years i.e. A.Y. 2010-11 and A.Y. 2011-12 and compute the income accordingly.

10. In the result, appeals filed by the revenue are dismissed and cross objections filed by appeal of the assessee are partly allowed.

11. Before parting, we noticed that these appeals and cross objections were heard on 12.02.2020 and the pronouncement is delayed due to lockdown in view of COVID-19 pandemic. The pronouncement is as per Rule 34(5) of Income Tax Appellate Tribunal Rules, 1963 and Hon'ble Bombay High Court decision vide orders dated 15.04.2020 and 15.06.2020 extending the time bound periods specified by Hon'ble High Court by removing the period under lockdown. This aspect was also dealt with in detail by the Mumbai Bench of the Tribunal in case of DCIT v. JSW Steel Vide order dated 14.05.2020 in ITA.No. 6264/Mum/2018.

Order pronounced on 29.09.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-  
**(RAJESH KUMAR)**  
**ACCOUNTANT MEMBER**  
Mumbai / Dated 29/09/2020  
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**