

**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 NO. 1148/MUM/2019 (A.Y: 2009-10)**

M/s. Pavapuri Metals & Tubes 15, Vimal Darshan Bldg., 9 <sup>th</sup> Khetwadi Lane Mumbai – 400 004  <b>PAN: AAGFP4994G</b>	v.	Income Tax Officer Ward – 19(2)(5) Room No. 210, 2 <sup>nd</sup> Floor Matru Mandir Tardev Road Mumbai – 400 007
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by : Shri Akash Kumar**

**Department by : Shri R. Bhoopathi**

**Date of Hearing : 11.02.2020**

**Date of Pronouncement : 29.09.2020**

**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) – 7, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 17.12.2018 for the Assessment Year 2009-10.
2. Assessee has raised following grounds in its appeal: -

*"1. The Income-tax Officer - 19(2)(5), Mumbai (hereinafter referred to as the Assessing Officer) erred in issuing notice under section 148 of the Act.*

*The appellants contend that on the facts and in the circumstances of the case and in law, the notice issued under section 148 is bad in law and consequently, the assessment order needs to be quashed.*

*2. The Commissioner of Income-tax (Appeals) - 7, Mumbai (hereinafter referred to as the CIT(A)) erred in upholding the action of the Assessing Officer in making an addition of a sum of Rs 9,71,785, being 12.5% of purchases aggregating Rs 77,74,274 debited to the profit and loss account on the ground that the said purchases are non-genuine.*

*The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have confirmed the action of the Assessing Officer inasmuch as the CIT(A) has not correctly appreciated the facts in its entirety; the addition on facts and in law, requires to be deleted.*

*The appellants crave leave to add to, alter and/ or amend the aforesptated grounds of appeal."*

**3.** Briefly stated the facts are that, the assessee, a firm, engaged in the business of trading in Ferrous and non-Ferrous metals filed return of income on 26.09.2009 declaring income of ₹.57,540/-. Return was processed u/s. 143(1) of the Act and subsequently reopened by issue of notice on 11.02.2014 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 furnished ledger account and cheque payments and submitted that the purchases made from the parties are genuine. 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 ₹.77,74,274/- as non-genuine. . The Assessing Officer however estimated the profit element from such purchases at 12.5% and disallowed ₹.9,71,785/- while computing the income. On appeal the Ld.CIT(A) sustained the addition as made by the Assessing Officer.

**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]. We agree with the view of the lower authorities that there should be an estimation of profit element from these purchases and should be estimated reasonably as the assessee could not conclusively prove that the purchases made are from the parties as claimed, especially in the absence of any confirmations from them. Taking the totality of facts and circumstances, keeping in view the nature of business of the assessee i.e. trader in iron and steel, it would be justified if the profit element embedded in those purchases are estimated at 4%. Accordingly, we direct the Assessing Officer to estimate the profit element from the non-genuine purchases at 4% and restrict the disallowance of purchases to 4% and compute the income accordingly.

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

7. Before parting, we noticed that this appeal was heard on 11.02.2020 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**