

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

**BEFORE SHRI SAKTIJIT DEY (JM)**

**ITA No. 2235/MUM/2019  
Assessment Year: 2010-11**

The Income Tax Officer 3(1), Room No. 3, 6 <sup>th</sup> Floor, B-Wing, Ashar IT Park, Road No. 16Z, Wagle Industrial Estate, Thane (W) - 400604	<b>Vs.</b>	Shri Nilesh Dhanji Nagda, Prop. Subodh Associates, Gala No. 2, Plot No. A65, Road No. 21, Wagle Estate, Thane - 400604 PAN: ADGPN1427R
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri Udaya Bhaskar Jakka (DR)  
Assessee by : None

Date of Hearing: 08/10/2020  
Date of Pronouncement: 15/10/2020

**ORDER**

**PER SAKTIJIT DEY, JM**

This is an appeal by the revenue against the order dated 01.02.2019 of learned Commissioner of Income Tax (Appeals)- 2, Thane pertaining to the assessment year 2010-11.

2. When the appeal was called for hearing no one appeared on behalf of the assessee to represent the case. Considering the nature of dispute, I proceed to dispose of 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 partial relief granted by learned Commissioner (Appeals) in the matter of addition made by the Assessing Officer on account of non- genuine purchases.

4. Briefly the facts are, the assessee, an individual, is engaged in the business as a reseller of building materials. For the assessment year under dispute, the assessee filed his return of income on 31.09.2011 declaring total

income of Rs. 2,28,090/-. 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, Govt. of Maharashtra that the assessee is a beneficiary of accommodation bills provided by way of non – genuine purchases worth Rs. 10,81,740/- from one party, the Assessing Officer reopened the assessment under section 147 of the Act. In course of the assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases through supporting evidence. In response to the query raised, the assessee furnished various details including purchase/sale register, bank statement, party wise sales/purchases etc. The Assessing Officer however was not fully satisfied with the evidences furnished by the assessee. To independently verify the genuineness of the aforesaid purchases, the Assessing Officer issued notice under section 133(6) of the Act to the selling dealer. As observed by the Assessing Officer, the said notice returned back unserved. Keeping in view the aforesaid facts, the Assessing Officer ultimately concluded that the purchases are non-genuine. Accordingly, disallowing such purchases he added back the amount of Rs. 10,81,740/- to the income of the assessee. The assessee challenged the aforesaid addition before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) restricted the addition to 10.28% of the alleged non-genuine purchases, which worked out to Rs. 1,11,203/-.

5. I have considered the submissions of the learned Departmental Representative and perused the material on record. As could be seen from the facts on record, in course of assessment proceedings, as per the Assessing Officer's own admission the assessee furnished his books of account with audited financial statements, bank statements, purchase and sale register, party wise details of sales etc. The Assessing Officer has not pointed out any discrepancy in the evidences furnished. Apart from the information received from the Sales Tax Department, the other reasons for which the Assessing Officer disallowed the purchases are, firstly, notice issued under section 133(6)

of the Act returned back unserved and on physical enquiry the concerned party was found to be untraceable. Further, the assessee failed to produce the concerned parties before the Assessing Officer. These reasons led the Assessing Officer to treat the purchases as non-genuine and make disallowance of such purchases. However, fact remains, before the Assessing Officer the assessee had furnished party wise details of sales and purchases. It is also a fact that sales effected by the assessee have not been doubted. The aforesaid factors prove that the assessee must have purchased the goods, though, may be from unverified sources. In such circumstances, only the profit element embedded in such purchases can be considered for addition. In view of the aforesaid, I do not find any infirmity in the decision of learned Commissioner (Appeals) in restricting the addition to only the profit element which has been estimated at 10.28%. Accordingly, I uphold the decision of learned Commissioner (Appeals) by dismissed the grounds.

6. In the result appeal filed by the revenue is dismissed.

Order pronounced in the open court on 15<sup>th</sup> October, 2020.

*Sd/-*  
SAKTIJIT DEY  
(JUDICIAL MEMBER)

मुंबई Mumbai; दिनांक Dated: 15/10/2020

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**