



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.2573/Mum./2019  
(Assessment Year : 2011-12)

ITA no.2572/Mum./2019  
(Assessment Year : 2010-11)

Gayatri Enterprises  
59, Mohamed Ali Road  
Lotus Building, 2<sup>nd</sup> Floor  
Masjid Bunder  
Mumbai 400 003  
PAN – AAAFG2960P

..... Appellant

v/s

Income Tax Officer  
Word-32(1)(5), Mumbai

..... Respondent

Assessee by : None  
Revenue by : Shri Sanjay J. Sethi

Date of Hearing – 25.11.2020

Date of Order – 08.12.2020

**ORDER**

The aforesaid appeals have been filed by the assessee challenging two separate orders, both dated 7<sup>th</sup> February 2019, passed by the learned Commissioner of Income Tax (Appeals)-46, Mumbai, pertaining to the assessment years 2010-11 and 2011-12.

2. When these appeals were called for hearing, no one was present on behalf of the assessee to represent these cases. There is no

application seeking adjournment either. Considering the nature of dispute, I proceed to dispose off the appeals ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. The only common dispute in both these appeals relate to disallowance made on account of non-genuine purchases.

4. Brief facts are, the assessee a partnership firm is engaged in the business of trading in pipe fittings required for industrial purposes. For the assessment year 2010-11, the assessee filed its return of income on 27<sup>th</sup> August 2010, declaring total income of ₹ 2,72,340. Whereas for the assessment year 2011-12, the assessee filed its return of income on 21<sup>st</sup> September 2011, declaring total income of ₹ 2,16,341. The returns of income filed by the assessee were initially processed under section 143(1) of the Income Tax Act, 1961 (for short "*the Act*"). Subsequently, on the basis of information received from the Sales Tax Department through DGIT (Inv.), Mumbai, indicating that purchases worth ₹ 66,15,164, in assessment year 2010-11 and ₹ 23,34,841, in assessment year 2011-12 are non-genuine, the Assessing Officer re-opened the assessments under section 147 of the Act. In the course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of the aforesaid

purchases through supporting evidences. Since, the evidences produced by the assessee were not to the satisfaction of the Assessing Officer, he held that the purchases shown by the assessee are non-genuine. Further, he observed that the gross profit shown by the assessee is also low. Therefore, relying upon certain judicial precedents, he proceeded to estimate the profit on the alleged non-genuine purchases by applying the rate of 12.5%. Accordingly, he made additions of ₹ 8,26,896 and ₹ 2,91,855, in assessment years 2010-11 and 2011-12 respectively. Though, the assessee contested the aforesaid additions before learned Commissioner (Appeals), however, it did not succeed.

5. I have considered the submissions of learned Departmental Representative and perused the material on record. On going through the orders of the Departmental Authorities, it is manifest that there was specific information received from the Sales Tax Department to indicate that certain purchases made by the assessee were non-genuine as concerned selling dealers were identified as hawala operator by the Sales Tax Department. In the course of assessment proceedings, the Assessing Officer had called upon the assessee to furnish certain documentary evidences, such as, delivery challan, transportation bills, purchase bills, goods received notes, etc. However, the documents called for could not be furnished by the

assessee in its entirety. Further, the notices issued under section 133(6) of the Act to the concerned selling dealers returned back unserved. Thus, from the aforesaid facts, it is quite clear that the assessee failed to conclusively prove the fact that the purchases were made from the declared source. However, considering the fact that the assessee has effected corresponding sales, doubt was only with regard to source of purchases. For this reason alone, the Assessing Officer has estimated the profit element embedded in non-genuine purchases @ 12.5% and learned Commissioner (Appeals) has confirmed the additions. This is solely for the reason that the assessee must have purchased the goods from unverified sources/grey market by not paying VAT and thereby suppressing the true profit. I do not find any infirmity in the aforesaid conclusion of the Departmental Authorities. Therefore, the decision of the Departmental Authorities in estimating the profit @ 12.5% on the non-genuine purchases and restricting the disallowance to that extent is upheld as it is in conformity with the view taken by the Tribunal in similar cases. Grounds raised by the assessee are dismissed.

6. In the result, appeals are dismissed.

Order pronounced open court on 08.12.2020

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 08.12.2020**

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