



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.3441/Mum./2019  
(Assessment Year : 2011-12)

ITA no.3445/Mum./2019  
(Assessment Year : 2010-11)

Shri Kamlesh P. Desai  
602, Kalpana, Besant Street  
Santacruz (W), Mumbai 400 054  
PAN – AABPD6487D

..... Appellant

v/s

Income Tax Officer  
Word-21(2)(1), Mumbai

..... Respondent

ITA no.3442/Mum./2019  
(Assessment Year : 2011-12)

ITA no.3444/Mum./2019  
(Assessment Year : 2009-10)

ITA no.3446/Mum./2019  
(Assessment Year : 2010-11)

Shri Kamlesh P. Desai (HUF)  
602, Kalpana, Besant Street  
Santacruz (W), Mumbai 400 054  
PAN – AAEHK0558B

..... Appellant

v/s

Income Tax Officer  
Word-21(2)(1), Mumbai

..... Respondent

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

Date of Hearing – 23.11.2020

Date of Order – 08.12.2020

### **ORDER**

The aforesaid appeals have been filed by the assessee in individual as well as Hindu Undivided Family (HUF) capacity challenging two separate orders, both dated 5<sup>th</sup> February 2019, passed by the learned Commissioner of Income Tax (Appeals)-34, Mumbai, pertaining to the assessment years 2009-10, 2010-11, 2011-12, respectively.

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 all these appeals relate to disallowance made on account of non-genuine purchases.

4. Brief facts are, both these assessees are engaged in the business of trading in paper and boards. The assessees filed returns of income as per the details given below:-

<i>Sl. no.</i>	<i>Name of the Assessee</i>	<i>Date of filing of return of income and A.Y.</i>	<i>Total Income Declared</i>

1.	<i>Shri Kamlesh P. Desai</i>	<i>29.09.2011 for A.Y. 2011-12</i>	<i>₹ 1,99,391</i>
2.	<i>Shri Kamlesh P. Desai (HUF)</i>	<i>27.09.2011 for A.Y. 2011-12</i>	<i>₹ 1,52,477</i>
3.	<i>Shri Kamlesh P. Desai (HUF)</i>	<i>29.09.2009 for A.Y. 2009-10</i>	<i>₹ 2,81,254</i>
4.	<i>Shri Kamlesh P. Desai</i>	<i>24.01.2011 for A.Y. 2010-11</i>	<i>₹ 1,45,038</i>
5.	<i>Shri Kamlesh P. Desai (HUF)</i>	<i>30.09.2011 for A.Y. 2010-11</i>	<i>₹ 1,43,110</i>

5. The returns of income filed by the assesseees 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, it was found that certain purchases claimed to have been made by the assesseees are non-genuine. Therefore, the Assessing Officer re-opened the assessment 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 assesseees were not to the satisfaction of the Assessing Officer, and further, the notices issued seeking information from the selling dealers returned back unserved, he held that the purchases are non-genuine. Therefore, relying upon certain judicial precedents, he proceeded to estimate the profit on the alleged non-genuine purchases by applying the rate of

25%. Accordingly, he made additions in all the assessment years under consideration. Learned Commissioner (Appeals) while deciding the issue, however, reduced the addition to 12.5%.

6. 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 is specific information received from the Sales Tax Department to indicate that certain purchases made by the assesseees were non-genuine as concerned selling dealers were identified as hawala operators by the Sales Tax Department. In the course of assessment proceedings, the Assessing Officer had called upon the assessee to furnish certain documentary evidences which 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 unreserved. 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 @ 25% which was reduced to 12.5% by learned Commissioner

(Appeals). 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 profits. I do not find any infirmity in the aforesaid conclusion of the Departmental Authorities. Further, the decision of learned Commissioner (Appeals) in reducing the disallowance to 12.5% of the non-genuine purchases appears to be reasonable keeping in view the decision of the Tribunal in similar nature of cases. Therefore, I uphold the decision of Learned Commissioner (Appeals) on the issue. Consequently, the grounds raised by the assesseees are dismissed.

7. In the result, appeals are dismissed.

Order pronounced in the open court on 08.12.2020

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 08.12.2020**

*Shri Kamlesh P. Desai*  
*Shri Kamlesh P. Desai (HUF)*

*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