



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.4093/Mum./2019  
(Assessment Year : 2009-10)

ITA no.4094/Mum./2019  
(Assessment Year : 2010-11)

ITA no.4095/Mum./2019  
(Assessment Year : 2011-12)

Income Tax Officer  
Ward-22(3)(5), Mumbai

..... Appellant

v/s

Late Smt. Urmilla Kanjibhai Patel  
3, Giral CHS Ltd., Chapel Lane  
Santacruz (W) Mumbai 400 012  
PAN - AADPK9301P

..... Respondent

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

Date of Hearing - 07.12.2020

Date of Order - 17.12.2020

**ORDER**

Captioned appeals have been filed by the Revenue challenging the common order dated 29<sup>th</sup> March 2019, passed by the learned Commissioner of Income Tax (Appeals)-34, Mumbai, for the assessment years 2009-10, 2010-11 and 2011-12.

2. When the appeals were called for hearing, no one was present on behalf of the respondent assessee to represent the case. 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. Brief facts are, the assessee, since deceased, was an individual and was engaged in the business of manufacturer and contractor in engineering goods. For the assessment years under dispute, the assessee had filed her return of income in regular course as per section 139(1) of the Act. The returns of income filed by the assessee were initially processed under section 143(1) of the Act. Subsequently, the Assessing Officer received information from the Sales Tax Department that certain purchases made by the assessee in relevant assessment years are non-genuine as the concerned selling dealers have been identified as hawala operators providing accommodation bills. On the basis of such information, the Assessing Officer re-opened the assessments under section 147 of the Act. In course of assessment proceedings, the Assessing Officer called upon the assessee to furnish certain documentary evidences to prove the genuineness of purchases. As observed by the Assessing Officer, the assessee furnished ledger account copy of the sellers, purchase bills and bank statement showing payment made through cheques. However, the assessee was unable to furnish transportation receipts, delivery challans, lorry receipts and stock register. Therefore, the

Assessing Officer treated the purchases as non-genuine. However, taking into account the gross profit rate declared by the assessee in the relevant assessment years, he made the addition in different assessment years as under:-

<i>A.Y.</i>	<i>Profit Rate Adopted</i>	<i>Addition Made</i>
2009-10	33%	₹ 15,651
2010-11	33%	₹ 9,83,654
2011-12	26%	₹ 7,72,731

4. The assessee contested the aforesaid additions before the first appellate authority.

5. After considering the submissions of the assessee in the context of facts and material available on record and relying upon certain judicial precedents, learned Commissioner (Appeals) ultimately restricted the addition to 25% of the non-genuine purchases in all the assessment years under dispute.

6. Heard the learned Departmental Representative and perused the material on record. As could be seen from the facts on record, on the basis of certain information received from the Sales Tax Department, the Assessing Officer has treated certain purchases made by the assessee as non-genuine. However, instead of disallowing the entire purchases, he has restricted the disallowance to certain percentage of

the alleged non-genuine purchases. It is further seen from record that the assessee did furnish some documentary evidence in support of the purchases made. Further, the sales declared by the assessee have not been doubted by the Assessing Officer. Therefore, the dispute/doubt if any is only with regard to the source of purchases. For this reason alone, the Assessing Officer has not disallowed the entire purchases but has restricted the disallowance to the profit element embedded in such purchases. Learned Commissioner (Appeals), though, has agreed that the assessee has failed to prove the genuineness of purchases conclusively, however, he has only interfered with the quantum of disallowance by restricting it to 25% of the non-genuine purchases. In my considered opinion, the aforesaid decision of learned Commissioner (Appeals) is fair and reasonable, hence, needs to be upheld. Accordingly, I do so by dismissing the grounds raised by the Revenue for all the assessment years under consideration.

7. In the result, appeals are dismissed.

Order pronounced in the open court on 17.12.2020

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

**MUMBAI, DATED: 17.12.2020**

*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