

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

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2993/MUM/2019
Assessment Year: 2010-11**

ACIT-32(2),
R. No. 720, 7th floor, Kautilya
Bhavan, C-41-43, G Block, BKC,
Bandra (East) Mumbai-400051.

Vs.

Smt. Pragna C. Mehta,
1003, Ashoplav CHSL, S.V.
Road, Borivali (West),
Mumbai-400092.

Appellant

**PAN No. AAHPM4038R
Respondent**

**Cross Objection No. 56/MUM/2020
(ITA No. 2993/MUM/2019)
Assessment Year: 2010-11**

Smt. Pragna C. Mehta,
1003, Ashoplav CHSL, S.V. Road,
Borivali (West),
Mumbai-400092.

Vs.

ACIT-32(2),
R. No. 720, 7th floor, Kautilya
Bhavan, C-41-43, G Block,
BKC, Bandra (East) Mumbai-
400051.

**PAN No. AAHPM4038R
Appellant**

Respondent

Revenue by : Ms. Smita Verma, DR
Assessee by : Mr. Ajay Singh, AR

Date of Hearing : 21/12/2020
Date of pronouncement : 22/12/2020

ORDER

PER N.K. PRADHAN, A.M.

The appeal filed by the Revenue and the cross objection by the assessee are directed against the order of the Commissioner of Income Tax

(Appeals)-46, Mumbai [in short 'CIT(A)'] and arise out of the assessment completed u/s 143(3) r.w.s 147 the Income Tax Act 1961, (the 'Act').

2. Briefly stated, the facts of the case are that the assessee filed her return of income for the assessment year (AY) 2010-11 on 28.09.2010 declaring total income of Rs.36,26,405/-. The assessee is a re-seller and importer of fire fighting systems and allied items. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills amounting to Rs.44,47,793/-, the AO reopened the assessment and issued notice u/s 133(6) to the concerned parties for verification. However, those notices were returned unserved by the postal authorities with the remarks "left/closed". Thereafter, the AO issued a show cause notice to the assessee to furnish details which has been extracted at page 3-5 of the assessment order. In compliance to the show cause notice, the assessee filed before the AO copy of ledger account, purchase bills, corresponding sale bills and bank statement reflecting payments made. However, the AO was not convinced with the details filed by the assessee and made an addition of Rs.12,12,468/- on the following reasons :

"To determine the exact profit element from such bogus purchases reliance can be placed on the precedent followed by this office by adopting gross profit ratio of assessee's business. As such the G.P. ratio for this year is 27.26% which seems to be reasonable. Hence, in view of the facts stated above and considering the fact that for A.Y. 2009-10 the similar addition on account of bogus purchase was made @ 31.88% & for A.Y. 2011-12 @ 31.34 % being G.P. ratios of respective A.Y. vide order u/s. 143(3) r.w.s. 147 of the Income Tax Act 1961 dated 31-03-2015, I worked out the profit element from such bogus purchases @ 27.26% which is G.P. ratio of the assessee's business for the year under consideration. As such the addition to the tune of Rs.12,12,468/- being 27.26% of non-genuine purchases of Rs.44,47,793/- is being made this year u/s. 69C of the Act."

3. In appeal, the Ld. CIT(A) by following the decision in *CIT v. Simit Sheth* (2013) 38 taxmann.com 385 (Guj), *Bholanath Polyfab Pvt. Ltd.* 355 ITR 290 (Guj), estimated the profit @ 12.5% of the purchases made from the bogus parties.

4. Before us, the Ld. Departmental Representative (DR) submits that the addition of Rs.12,12,468/- has been rightly made by the AO and the same be confirmed. On the other hand, the Ld. counsel for the assessee submits that similar issue arose before the Tribunal in assessee's own case for AY 2009-10 (ITA No. 438/Mum/2016) and AY 2011-12 (ITA No. 3715/Mum/2017) and the Tribunal has restricted the disallowance to 8% of the alleged bogus purchases and the same be followed.

5. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

As recorded by the AO, the assessee filed before him copy of ledger account, purchase bills, corresponding sale bills and bank statement reflecting payments made. Only the notice issued by the AO to the concerned parties u/s 133(6) were returned un-served by the postal authorities with the remark "left/closed".

We find that similar issue arose before the Tribunal in AY 2009-10 and AY 2011-12. The Tribunal *vide* order dated 08.09.2017 for AY 2011-12 (ITA No. 3715/Mum/2017) held that :

"5. We have heard the rival contentions and perused relevant material on record. We are of the considered opinion that there could be no sale without purchase / consumption of material keeping in view the assessee's nature of business which was material intensive and could not be carried out without consumption of material. The sales turnover achieved by the assessee has not been disputed by

the revenue and the payments were through banking channels. The purchases were backed by invoices. At the same time, the assessee could not produce the party for confirmation and notice sent u/s 133(6) remained un-served, which cast serious doubt on assessee's claim. Therefore, in such a situation, the addition, which could be made, was to account for profit element embedded in these purchase transactions to factorize for profit element earned by assessee against possible purchase of material in the greymarket and undue benefit of VAT against bogus purchases, which lower authorities have rightly done so. However, on totality of facts, we consider estimated addition to be on the higher side and therefore, restrict the same to 8% of alleged bogus purchases. The Ld. AO is directed to re-compute the income of the assessee in the light of addition sustained by us."

6. Facts being identical, we follow the above order of the Co-ordinate Bench and direct the AO to restrict the disallowance to 8% of the alleged bogus purchases.
7. In the result, the appeal by the revenue is dismissed; the cross objection by the assessee is partly allowed.

Order pronounced in the open Court on 22/12/2020.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated:22/12/2020
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai