

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” Bench, Mumbai**

**Before Shri Vikas Awasthy, Judicial Member
and Shri S.Rifaur Rahman, Accountant Member**

**ITA Nos.7020 & 7021/Mum/2018
(Assessment Years: 2010-11 & 2011-12)**

ITO-29(3)(5),
Room No. 211, C-10,
2nd Floor, Prathashakar Bhavan,
Bandra Kurla Complex,
Bandra (East),
Mumbai- 400051

Vs.

Shri Vikrant Vadilal Shah
403, 4th Floor, Neelkanth Nir,
Tridev Tulip, BPX Road,
Mulund (W),
Mumbai 400080

PAN – ANDPS9819B

(Appellant)

(Respondent)

Appellant by: Ms. Usha Gaikwad, D.R

Respondent by: None

Date of Hearing: 18.11.2020

Date of Pronouncement: 08.12.2020

ORDER

PER S.RIFAUR RAHMAN, AM:

The captioned appeals filed by the revenue are directed against the respective orders passed by the CIT(A)-40, dated 08.06.2016 for A.Y. 2010-11 and A.Y. 2011-12. As the issue involved in the captioned appeals are inextricably interlinked or in fact interwoven, the same are therefore being taken up and disposed off by way of a consolidated order. We shall first take up the appeal of the revenue for A.Y. 2010-11, wherein the revenue has been assailed before us the following grounds of appeal:

“On the facts and circumstances of the case, the Ld. CIT(A) has erred in restricting the addition of Rs.47,96,932/- being 100% to Rs.5,99,616/- being 12.5% of the aforesaid bogus purchases from hawala parties ignoring the fact that the assessee had failed to produce the parties.”

2. Brief facts of the case are that the assessee is a proprietor of M/s Dev Ispat Udyog engaging in the business of trading in M.S. Steel Items. The original return of income was filed on 13.10.2010 declaring total income of Rs.2,37,790/- and the same was processed as such under Sec.143(1). Subsequently, the information received from Sales Tax Department and DGIT(Inv.) Mumbai, that the assessee has made bogus/non-genuine purchases to the tune of Rs.47,96,932/- from the following parties during this assessment year:

Sr. No.	Name of the Party	Amount (Rs.)
1.	V.M. Udyog	14,45,860
2.	Shradhha Trading Co.	1,61,408
3.	Somnath International	3,90,156
4.	Saj Enterprises	10,04,302
5.	Bhumi Sales Corporation	17,95,206

Based on the above information Assessing Officer had a reason to believe that the assessee concealed/furnished inaccurate particulars of income, accordingly he reopened assessment by issuing a notice under Sec. 148 dated 26.06.2014. Subsequently, another notice under Sec. 148 dated 04.08.2014 was issued and served on the assessee on 08.08.2014. The A.O issued notice under Sec. 142(1), dated 14.07.2015 and served on the assessee. Subsequently, several notices under Sec. 142(1) were issued and served on the assessee and in response to the assessee and Id. A.R attended the proceedings, but even though assessee was given several opportunities, assessee could not submit the information as called for in the notice under Sec. 142(1) of the Act. Due to time limitation, assessment has to be completed, accordingly, assessment was completed under Sec.144 ex-parte assessment. After considering the financial statements submitted by the assessee, A.O observed that assessee has declared G.P and NP of 4.87% and 1.41% as against 3.37% and 0.95% of last year respectively. Since, assessee could not submit any detail and documentary evidence in support of the genuineness of the purchases, Assessing Officer treated the whole purchase value of Rs.47,96,932/- as suppressed profit by inflating and

introducing hawala purchases, accordingly, he made the addition. Since the revenue is in appeal against the restriction of addition of value of bogus purchases @ 12.5%, therefore, we are restricting ourselves to this facts.

3. Aggrieved with the above order assessee preferred an appeal before the CIT(A). After considering the submission of the assessee the Id. CIT(A) concluded by observing that assessee has filed details of sales corresponding purchases from hawala parties and A.O also noted in para 11 of the assessment order that quantitative details of goods purchased, sold and in stock are given in Annexure G of tax audit report. There is evidence of sale of goods against purchases from hawala parties and 100% disallowance of purchases would not be justified. Therefore, by referring to the order passed by Id. CIT(A) in assessment year 2009-10 in the assessee's own case he restricted the disallowance of purchases @ 12.5% with the observation that the element of profit embedded in such purchases from the hawala parties should be disallowed.

4. Aggrieved with the above order, the revenue is in appeal before us with the plea to sustain the 100% disallowance of purchase from hawala parties.

5. The Id. D.R brought to our notice facts of the case and finding of both the authorities we notice that Assessing Officer had considered 100% of the disputed purchases as suppressed profit by inflating and introducing hawala purchase whereas Id. CIT(A) restricted the disallowance @ 12.5% of the disputed purchases in order to disallow only the element of profit embedded in such disputed purchases. We are in agreement with the findings of the Id. CIT(A) which are in line with the Hon'ble Bombay High Court in the decision of **Pr.CIT vrs. M/s Mohommad Haji Adam & Co.** in **ITA No. 1004 of 2016**. Accordingly, we are inclined to accept the findings of the Id. CIT(A). Accordingly, grounds raised by the revenue are dismissed.

6. Since, the issue involved in the assessment year 2011-12 are similar to A.Y. 2010-11, therefore, we dismiss the grounds raised by the revenue in this assessment year also for parity of reasons.

7. In short, both the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 08.12.2020

Sd/-

Vikas Awasthy
(JUDICIAL MEMBER)

Mumbai, Date: 08.12.2020
PS: Rohit

Sd/-

S.Rifuar Rahman
(ACCOUNTANT MEMBER)

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "G" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai