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

BEFORE SHRI VIKAS AWASTHY, JM&
SHRI S. RIFAUR RAHMAN, AM

आयकरअपीलसं./ I.T.A. No. 4546/Mum/2019
(**निर्धारणवर्ष** / Assessment Year: 2010-11)

Shri Dinesh S. Dhokar, R. No. 6, Bldg No. 1, Dadarkar Compound, Vaibhav, C-Wing, 1st floor, Tardeo Road, Mumbai-400 034	**बनाम**/ Vs.	ITO-19(1)(4), 2nd floor, Room No. 222, Matru Mandir, Tardeo Raod, Mumbai-400 007
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAAPD8605N		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

&

आयकरअपीलसं./ I.T.A. No. 4545/Mum/2019
(**निर्धारणवर्ष** / Assessment Year: 2011-12)

Smt. Anita Dinesh Dhokar, R. No. 6, Bldg No. 1, Dadarkar Compound, Vaibhav, C-Wing, 1st floor, Tardeo Road, Mumbai-400 034	**बनाम**/ Vs.	ITO-19(1)(4), 2nd floor, Room No. 222, Matru Mandir, Tardeo Raod, Mumbai-400 007
स्थायीलेखासं ./जीआइआरसं ./PAN No. AACPD9237E		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	None
प्रत्यर्थीकीओरसे/**Respondentby**	:	Shri Sanjay Sethi, DR

सुनवाईकीतारीख/ **Date of Hearing**	:	11.01.2021
घोषणाकीतारीख / **Date of Pronouncement**	:	25.01.2021

आदेश / O R D E R

Per S. Rifaur Rahman, Accountant Member:

The present two Appeals has been filed by the two assessees who are related parties against the order of Ld. Commissioner of Income Tax (Appeals) – 29 & 4 in short referred as 'Ld. CIT(A)', Mumbai, dated 15.05.2019 & 20.05.2019 for Assessment Year (in short AY) 2010-11 and 2011-12 respectively.

2. At the outset, it is noticed that none has appeared on behalf of assessees in spite of calls and even no application for adjournment was moved. On the other hand, Ld. DR is present in the court and is ready with arguments. Therefore, we have decided to proceed with the hearing of the case ex-parte with the assistance of the Ld. DR and the material placed on record.

3. Since the issues raised in both the appeals are identical, therefore, for the sake of convenience, both appeals are clubbed, heard and disposed off by this consolidated order. First of all, we

are taking ITA No. 4545/Mum/2019 for Assessment Year 2011-12.

4. The brief facts of the case are that assessee filed its return of income on 21.09.2011 declaring total income of Rs. 3,53,706/-. The return was processed u/s 143(1) of the Act. Subsequently, information was received from the sales tax Department that assessee has indulged in bogus purchases. On verification, the details of accommodation entries availed by the assessee is given below:-

TIN	Hawala Parties	PAN	F.Y.	Amount in Rs.
27960603730V	Prakash Steel & Allies	AAAPC4405F	2010-11	20,53,399/-
27860664216V	Shankeshwar Sales Corporation	AACPD5521F	2010-11	25,94,554/-
	Total			46,47,953/-

Accordingly, the Assessment was reopened u/s 147 of the Act and the assessment was completed u/s 143(3) r.w.s. 147 of the Act determining the total income at Rs. 9,34,700/- after making addition of Rs. 5,80,994/- being 12.5% on account of total non-genuine purchases of Rs. 46,47953/-.

5. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the submission of assessee and by relying on the judicial pronouncements, sustained the addition @ 12.5% made by AO and dismissed the appeal of the assessee.

6. Aggrieved with the above order, assessee is preferred the appeal before us.

7. Considered the submission of Ld. DR and material placed on record, we notice that ITAT Mumbai Bench in the case of **Heeramaneck & Son Vrs. ACIT** passed in ITA No. 1862/Mum/2017, wherein it was held as under:-

> *5. So far as the quantum of additions are concerned, we are of the considered opinion that the assessee was engaged in trading activities, which could not be carried out without actual purchase of material. The turnover achieved by the assessee has not been disputed or disturbed by the revenue and the payments were through banking channels. The assessee was in possession of primary purchase documents and was able to reconcile the quantitative details. However, at the same time, the stated purchases were under grave doubt since the assessee could not produce any of the party to confirm*

the transactions and the information received from investigation wing revealed that all the suppliers were engaged in carrying out only paper transactions without actual delivery of material. The complete onus to prove the purchases conclusively was on assessee, which has remained un-discharged. In such a scenario, 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 grey market and undue benefit of VAT against alleged bogus purchases, which lower authorities have rightly done. However, considering GP rate of 10.59% already reflected by the assessee as well as VAT rate applicable to the goods being dealt with by the assessee, we find the estimation to be on the higher side and therefore, we restrict the same to 3% of alleged bogus purchases of Rs.1,87,08,961/-. The same comes to Rs.5,61,269/-. The order of Ld. AO stands modified to that extent. The Ld. AO is directed to re-compute the income of the assessee in terms of our above order.

8. Therefore, respectfully following the aforesaid decision, we notice that assessee has already declared GP ratio @ 2.11% from the purchases made from Prakash Steel & Allies and others

respectively during this year. We notice from the record that Ld. CIT(A) has sustained the addition made by the AO by estimating @ 12.5% of the alleged bogus purchases, in our view, which is too high considering the fact that assessee is dealing in trading activities. Assessee has declared margin this assessment year @ 2.11% and in previous assessment year @ 1.42%. On an average, assessee has declared margin of 2% (approx). In the trading activities, it is expected to earn around 3-5%. Taking the higher margin that assessee might have earned in the alleged transaction and as per the decision of Coordinate Bench of ITAT and the decision of Hon'ble Gujrat High Court in the case of **CIT vrs. Smith P. Seth (2013) 356 ITR 451 (Guj)**, we are inclined to direct the AO to estimate the income @ 3% (5% - 2%) of the alleged purchases. Accordingly, the grounds raised by the assessee are **partly allowed**.

9. Since, the other appeal by Shri Dinesh S. Dhokar in ITA No. 4546/Mum/2019 for Assessment Year 2010-11 are similar to the facts in above said appeal for Assessment Year 2011-12. Therefore, for parity of reason, we also **partly allow** the grounds of appeal raised by assessee.

10. In the net result, both the appeals filed by the assessee are **partly allowed.**

Orders pronounced in the open court on 25.01.2021.

Sd/-	*Sd/-*
(Vikas Awasthy)	(S. Rifaur Rahman)
न्यायिकसदस्य / Judicial Member	लेखासदस्य / Accountant Member

मुंबई Mumbai;दिनांकDated : 25.01.2021
Sr.PS. Dhananjay

<u>आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

.**उप/सहायकपंजीकार** (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**