



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.4127/Mum./2019  
(Assessment Year : 2010-11)

Income Tax Officer  
Ward-9(2)(1), Mumbai

..... Appellant

v/s

Bhairav Steel Enterprises Pvt. Ltd.  
10, Kanti Nagar, A-30, Rajgruhi  
Behind J.B. Nagar, Andheri Kurla Road  
Andheri (East), Mumbai 400 059  
PAN - AAACB9118K

..... Respondent

Revenue by : Shri Sanjay J. Sethi  
Assessee by : Shri Akash Kumar a/w  
Shri Rajiv Khandelwal,  
Shri Arvind Shah and  
Shri Jay Shah

Date of Hearing - 08.12.2020

Date of Order - 28/01/2021

**ORDER**

The aforesaid appeal has been filed by the Revenue challenging the order dated 25<sup>th</sup> March 2019, passed by the learned Commissioner of Income Tax (Appeals)-16, Mumbai, pertaining to the assessment year 2010-11.

2. The dispute in the present appeal is confined to partial relief granted by learned Commissioner (Appeals) in the matter of addition made by the Assessing Officer on account of non-genuine purchases.

3. Brief facts are, the assessee is a resident company engaged in the business of dealing in iron and steel. For the assessment year under dispute, the assessee filed his return of income on 27<sup>th</sup> September 2010, declaring total income of ` 10,34,740. The return of income so filed by the assessee was initially processed under section 143(1) of the Act. Subsequently, on the basis of information received from the Sales Tax Department, Government of Maharashtra, through DGIT (Inv.), Mumbai, that purchases worth ` 3,14,37,455, claimed to have been made during the year from thirteen parties are non-genuine, as, the concerned parties were identified as a hawala operators, the Assessing Officer re-opened the assessment under section 147 of the Act. During the assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of such purchases through supporting evidence. Further, to independently verify the genuineness of such purchases, the Assessing Officer issued notice under section 133(6) of the Act to the concerned parties. However, as alleged by the Assessing Officer, no reply was received from the concerned parties in response to such notices. Not being satisfied with the evidences furnished by the assessee, the Assessing Officer ultimately concluded that the purchases are non-genuine. However, the Assessing Officer ultimately disallowed 12.5% out of such purchases working out to 39,29,682, and added back to

the income of the assessee. The assessee challenged the aforesaid addition before the first appellate authority.

4. After considering the submissions of the assessee in the context of the facts and material on record, learned Commissioner (Appeals) restricted the addition to 3% of the alleged non-genuine purchases.

5. I have considered rival submissions and perused the material on record. It is evident, the doubt regarding the genuineness of the disputed purchases was on the basis of information received from the Sales Tax Department, Government of Maharashtra. However, the Assessing Officer has accepted the fact that the assessee has produced some supporting evidence to prove the genuineness of purchases. The only reason for which he did not accept the purchases to be genuine is, the assessee neither could produce the concerned parties nor could furnish transportation bills, weighment bills, etc. However, the very fact that the Assessing Officer did not disallow the entire purchase but has restricted it to 12.5% of the alleged non-genuine purchases indicates that the Assessing Officer also believes that the assessee had purchased the goods, though, may not be from the declared source. Therefore, he has proceeded to add the profit element embedded in such purchases. Considering the nature of business carried on by the assessee and the profit element normally attached to such business, I

fully agree with learned Commissioner (Appeals) in restricting the disallowance to 3% of the non-genuine purchases. Accordingly, the order of learned Commissioner (Appeals) is upheld by dismissing the grounds raised by the Revenue.

6. In the result, appeal is dismissed.

Order pronounced on 28/01/2021

**Sd/  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 28/01/2021**

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*

By Order

Assistant Registrar  
ITAT, Mumbai