

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"SMC" BENCH, MUMBAI**

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER

ITA NO. 4717/MUM/2019 (A.Y: 2011-12)

Shri Mahendrakumar Gulraj Jain C/o. D.C. Bothra & Co. LLP (CA) 297 Tardeo Road Wille Mansion, 1 st Floor Opp. Bank of India, Nana Chowk Mumbai - 400007 PAN: AADPJ2988D	v.	Income Tax Officer -19(2)(3) 2 nd Floor, Matru Mandir Tardev Road, Mumbai – 400007
(Appellant)		(Respondent)

Assessee by	:	Shri Rajkumar Singh
Department by	:	Shri Sanjay J. Sethi
Date of Hearing	:	21.01.2021
Date of Pronouncement	:	09.02.2021

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)–5, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.05.2019 for the A.Y. 2011-12 in confirming the addition of ₹.15,41,267/- being 12.5% of the alleged non-genuine purchases.

2. Briefly stated the facts are that, assessee an individual engaged in the business of ferrous and non-ferrous metals filed return of income on 10.09.2011 declaring income of ₹.8,42,954/- for the A.Y.2011-12 and the return was processed u/s. 143(1) of the Act. Subsequently, Assessing Officer received information from the DGIT(Inv.), Mumbai about the accommodation entries provided by various dealers and assessee was also one of the beneficiary from those dealers. The assessment was reopened U/s. 147 of the Act based on the information received from DGIT (Inv.), Mumbai, that the assessee has availed accommodation entries from various dealers who are said to be providing accommodation entries without there being transportation of any goods. In the reassessment proceedings, the assessee was required to prove the genuineness of the purchases made from various dealers as referred in Assessment Order. In response assessee furnished copies of purchase bills, ledger details and bank statements and submitted that the purchases made are genuine. Assessee further submitted that the payments are made through account payee cheques as such contended that all the purchases are genuine. However, parties were not produced before the Assessing Officer.

3. Not convinced with the submissions of the assessee the Assessing Officer treated the purchases as non-genuine and he was of the opinion

that assessee had obtained only accommodation entries without there being any transportation of materials and the assessee might have made purchases in the gray market. It is the finding of the Assessing Officer that assessee failed to produce the parties and as such the purchases to the extent made from the parties are remained unverifiable. Therefore, Assessing Officer treated ₹.15,41,267/- being 12.5% of the total non-genuine purchases of ₹.1,23,30,137/- for the A.Y. 2011-12 as non-genuine. On appeal the Ld.CIT(A) sustained the action of the Assessing Officer. Against this order of the Ld.CIT(A) assessee is in appeal.

4. Ld. Counsel for the assessee reiterated the submissions made before the Ld.CIT(A). Ld. Counsel for the assessee further submitted that the assessee is in the business of trading in Ferrous and non-Ferrous Metals and the disallowance made by the Assessing Officer and sustained by the Ld.CIT(A) is on higher side, thus requested to reduce the same. Learned Counsel for the assessee submitted that assessee has shown Gross Profit on sales @5.21, as such requested to restrict the addition to Gross Profit declared.

5. Ld.DR vehemently supported the orders of the authorities below.

6. Heard both sides, perused the orders of the authorities below. It is not in dispute that sales have been accepted as genuine from out of these purchases. When the sales have been accepted as genuine the entire purchases cannot be treated as non-genuine. The Hon'ble Gujarat High Court in the case of Bholanath Polyfab Pvt. Ltd [355 ITR 290] held that when the assessee made purchases and sold the finished goods as a natural corollary not the entire amount covered under such purchases would be subject to tax but only the profit element embedded therein. Similar view has been taken by the Hon'ble Gujarat High Court in the case of CIT *v.* Simit P. Seth [38 taxman.com 385]. Simply because the parties were not produced the entire purchases cannot be added as held by the Bombay High Court in the case of CIT *v.* Nikunj Eximp [216 Taxman.com 171]. I agree with the view of the lower authorities that there should be an estimation of profit element from these purchases and should be estimated reasonably as the assessee could not conclusively prove that the purchases made are from the parties as claimed, especially in the absence of any confirmations from them. Taking the totality of facts and circumstances, keeping in view the nature of business of the assessee i.e. trader in Ferrous and non-Ferrous Metals, it would be justified if the profit element embedded in those purchases are estimated at 6%. Accordingly,

I direct the Assessing Officer to estimate the profit element from the non-genuine purchases at 6% and restrict the disallowance of purchases to 6% and compute the income accordingly.

7. In the result, appeal of the assessee is partly allowed.

Order pronounced on 09.02.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 09/02/2021
Giridhar, Sr.PS

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum