

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

[Through Virtual Court]

**ITA. No: 2165/Ahd/2018
(Assessment Years: 2009-10)**

Dineshkumar Chunilal Shah (HUF) Prop. M/s Amar Steel Corporation D-501, Shilekh, Opp. Police Station, Shahibaug Road, Ahmedabad-380004		The I.T.O., Ward-1(2)(1), Ahmedabad
PAN No. AAFHD5413F		
(Appellant)		(Respondent)

**Appellant by : Shri Hardik Vora, A.R.
Respondent by : Shri Lalit P. Jain, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 09 -03-2021
Date of Pronouncement : 12-03-2021

PER MAHAVIR PRASAD, J.M.

1. This appeal filed by the Assessee is directed against the order of the Commissioner of Income Tax (hereinafter called CIT(A)) order no. CIT(A)-10/ITO, Ward-

1(2)(1)/10731/2016-17 order dated 11/09/2018 arising out of assessment order dated 16/12/2016. Assessee has taken following grounds of appeal:

- 1. On the facts and circumstances of the case as well as law on the subject, the learned Assessing Officer has erred in reopening the assessment u/s 147 of the Act.*
- 2. On the facts and circumstances of the case as well as law on the subject, the learned CIT (Appeals) has erred in confirming addition of Rs. 39,64,242/- being 25% of total purchase of Rs.1,58,56,966/- made by Assessing Officer as unverifiable purchase.*
- 3. It is therefore prayed that the above additions made by the Assessing officer and confirmed by CIT (Appeals) may please be deleted.*
- 4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.*

2. Facts of the case are that as per the information received from Maharashtra Sales Tax Department, in the statement recorded on oath, the hawala billers have themselves admitted that they were involved in the operation of providing accommodation entries of bogus sale bills and have been given the same to the various parties including the assessee as per their requirement. The Maharashtra Sales Tax Department has provided a list of parties of beneficiaries who have taken accommodation entries of bogus sales bills and in the instant case, the assessee's name is one of them who have made purchases from such hawala billers. In notice of the Assessing Officer in reply assessee submitted that it has submitted complete books of accounts like sales and purchase register with quantitative details, cash book, bank book, all ledger accounts, audit report with annexures. However, the assessee has not submitted copy of bills, confirmation a/cs. From suppliers and copy of payment receipts, delivery challans etc. and Assessing Officer disallowed 25% of the total unverifiable purchases as reasonable amount of disallowance and made disallowance of Rs. 39,64,242/- being 25% of the total purchases made amounting to Rs. 1,58,56,966/-.

3. Thereafter assessee preferred first statutory appeal before the Ld. CIT(A) who did not agree with the contention of the assessee and cited an order of ITAT in the case of M/s. Vijay Proteins Ltd. reported in 55 TTJ 76 wherein it was held fair and reasonable to disallow 25% of the total unverifiable purchases as reasonable amount of disallowance.
4. Now assessee has come before us. Assessee has pressed ground no. 1 and when bench asked him that if assessee is ready for 8% of the addition of total purchases than matter can be heard.
5. On the other hand, assessee cited a judgment of Hon'ble Gujarat High Court in the case of CIT vs. Gujarat Ambuja Export Ltd. [2014] 43 taxmann.com 244 (Gujarat) wherein it is held:
 1. *Section B9 of the Income-tax Act, 1961 - Unexplained investments (Bogus purchases) - Assessment year 2007-08 - Assessee was in business of manufacturing and exports of de-oiled cake, starch, glucose and cotton yarn - Assessing Officer examined various purchases made by assessee and noted that entire purchases made from one 'V' were bogus and added entire amount to total income of assessee - Commissioner (Appeals) was of opinion that purchases were not bogus, he however taxed 25 per cent of amount - Tribunal noted that GP rate and net profit rate of year under consideration were better than previous year, stock register was properly maintained and purchases in question were reflected in such stock register - Tribunal thus reduced addition to 5 per cent of amount - Whether when assessee could produce before authorities precise rate at which purchases were made from 'V' and other suppliers to demonstrate that purchases made on same day carried same price, it could not be said that purchase price was artificially inflated - Held, yes - Whether since Tribunal's finding were based on parameters such as higher net and gross profit rates of present year compared to earlier years of recent past, Tribunal committed*

no error so as to give rise to any question of law - Held, yes [Para 12] [in favour of assessee]

6. It is pertinent to note here sales were not disputed by the lower authorities so we just failed to understand how purchases can be doubted. So ultimately, Id. A.R. agreed for 8% addition of the total sales amount. We agree with the proposal of 8% of addition.
7. In the result, appeal filed by the Assessee is partly allowed in terms and conditions hereinabove.
8. In the result, appeal filed by the Assessee is partly allowed.

Order pronounced in Open Court on	12 - 03- 2021
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 12/03/2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad