

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "SMC", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)**

**ITA No.7564/MUM/2019  
Assessment Year: 2010-11**

Income Tax Officer – 17(2)(2), Room No. 114, 1 <sup>st</sup> Floor, Kautilya Bhawan, G-Block, Near Videsh Bhawan, BKC, Mumbai - 400051	<b>Vs.</b>	Labdhi Enterprises, 45, Latif House, 3 <sup>rd</sup> Floor, Carnac Bunder, Masjid Mumbai - 400009 PAN: AACFL2346N
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri Shiddrampa (DR)

Assessee by : Shri Mehul Shah (AR)

Date of Hearing : 24/05/2021

Date of Pronouncement: 04/06/2021

**ORDER**

This is an appeal by the revenue against the order dated 24.10.2019 of learned Commissioner of Income Tax (Appeals) – 28, Mumbai for the assessment year 2010-11.

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

3. Briefly the facts are, the assessee is a partnership firm engaged in the business of trading in Iron and Steel, hardware, tools, pipe fittings etc. For the assessment year under dispute, the assessee filed its return of income on 16.09.2010 declaring total income of Rs. 5,61,680/-. Subsequently, based on the information received from DGIT (Inv.), Mumbai and Sales Tax Department, Govt. of Maharashtra, the Assessing Officer (AO) having found that the

assessee is a beneficiary of accommodation bills provided by certain hawala operators by way of non genuine purchases worth Rs. 1,17,62,668/-, reopened the assessment under section 147 of the Act. In course of assessment proceedings, the AO called upon the assessee to furnish supporting evidence to prove the genuineness of purchases. In response, the assessee furnished some supporting evidences to prove the purchases. However, the AO was not convinced. Ultimately, the AO held that the assessee has intentionally inflated the purchases by taking accommodation entries to reduce the profit element. After appreciating assessee's contention that the assessee had sold the goods representing alleged non-genuine purchases, the AO concluded that only profit element embedded in such purchases can be added to the income of the assessee. Accordingly, estimating profit element on the alleged non-genuine purchases at 12.5%, the AO disallowed/added back an amount of Rs. 21,32,833/-. The assessee contested the aforesaid disallowance/addition before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and material on record and taking note of the fact that while deciding identical issue in assessee's own case, the Tribunal has restricted the disallowance/addition to 5% of the alleged non-genuine purchases, learned Commissioner (Appeals) directed the AO to restrict the addition to 5% of the alleged non-genuine purchases.

4. I have considered rival submissions and perused the material on record. The dispute before us, as it appears, is only confined to the quantum of disallowance/addition to be made because of alleged non-genuine purchases. While the AO has made disallowance by estimating profit element on the alleged bogus purchases at 12.5%, learned Commissioner (Appeals) has restricted it to 5%. It is observed, while deciding identical issue in assessee's own case in assessment year 2009-10, in ITA No. 2966/Mum/2018 dated 22.03.2019, the Tribunal after taking note of the fact that the first appellate authority while deciding assessee's appeal for Assessment Year 2011-12 involving identical facts and issues had restricted the addition/disallowance to

5% of the alleged non-genuine purchases. In the impugned assessment year, learned Commissioner (Appeals) while restricting the addition/disallowance to 5% has followed the aforementioned order of the Tribunal. Nothing has been brought to my notice to demonstrate that the material facts relating to issue in the impugned assessment year are in any way different from assessment year 2009-10.

5. In view of the aforesaid, I do not find any infirmity in the decision of the learned Commissioner (Appeals). Accordingly, I uphold the decision of learned Commissioner (Appeals) on the issue by dismissing the ground raised by the revenue.

6. In the result, appeal is dismissed.

Order pronounced in the open court on 4<sup>th</sup> June, 2021.

*Sd/-*  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 04/06/2021

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**