

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

**ITA No. 7593/MUM/2019
Assessment Year: 2008-09**

**ITA No. 7594/MUM/2019
Assessment Year: 2009-10**

**ITA No. 7595/MUM/2019
Assessment Year: 2010-11**

&

**ITA No. 7596/MUM/2019
Assessment Year: 2011-12**

Income Tax Officer – 22(1)(5), 323, 3 rd Floor, Piramal Chambers, Lal Baug, Parel, Mumbai - 400012	Vs.	M/s Himalaya Plywood, Shop No. 11, Gold Coin Apts., Vakola Pipe Line, Nehru Road, Santacruz (East), Mumbai - 400055 PAN: AABFH1856Q
(Appellant)		(Respondent)

Revenue by : Shri Shiddaramappa (DR)

Assessee by : None

Date of Hearing : 25/05/2021

Date of Pronouncement: 25/06/2021

ORDER

Captioned appeals relating to the same assessee have been filed by the revenue challenging a common order dated 12.09.2019 passed by the learned Commissioner of Income Tax (Appeals)-34, Mumbai for the assessment years 2008-09, 2009-10, 2010-11 & 2011-12.

2. When appeals were called for hearing no one was present for the assessee. Considering the nature of dispute, I proceed to dispose of the appeals

ex-parte qua the assessee after hearing the learned Departmental Representative and based on material on record.

3. The only dispute raising all these appeals relates to partial relief granted by learned Commissioner (Appeals) in the matter of additions made because of alleged non-genuine purchases.

4. Briefly the facts are, the assessee is a partnership firm stated to be engaged in the business as a dealer in plywood, teakwood, laurinetes etc. For the assessment years under dispute the assessee had filed its returns of income in regular course. Subsequently, the Assessing Officer (AO) received information from the DGIT (Inv.), Mumbai that certain purchases made by the assessee in the assessment years under dispute are non-genuine as the assessee has availed accommodation/fictitious bills from the concerned selling dealers. From the information available on record it was also found that Sales Tax Department, Government of Maharashtra has also found the concerned selling dealers as hawala operators providing accommodation bills. Thus, based on such information the AO reopened the assessments under section 147 of the Act. In course of assessment proceedings, the AO called upon the assessee to prove the genuineness of the disputed purchases through supporting evidence. Though, the assessee furnished some documentary evidences to claim the purchases as genuine, however, the AO was unconvinced. Therefore, rejecting assessee's claim he held the purchases as non genuine. However, being of the view that the assessee has suppressed its actual profit by inflating the purchases, the AO proceeded to disallow 25% out of the purchases made in each assessment year under dispute. The disallowances made by the AO in different assessment years are as under:

Assessment Year 2008-09	: Rs. 7,19,026/-
Assessment Year 2009-10	: Rs. 21,99,636/-
Assessment Year 2010-11	: Rs. 15,94,724/-
Assessment Year 2011-12	: Rs. 6,17,001/-

5. The aforesaid disallowances made by the AO were contested before learned Commissioner (Appeals). Partly accepting the submissions of the assessee, learned Commissioner (Appeals) restricted the disallowance to 12.5% of the alleged non-genuine purchases in each assessment years under dispute.

6. I have considered the submissions of learned Departmental Representative and perused the materials on record. Undisputedly, though, the AO has held certain purchases made by the assessee in different assessment years as non-genuine, however, ultimately he has restricted the disallowance to the profit element embedded in such purchases by estimating at 25%. Whereas, learned Commissioner (Appeals) has reduced it to 12.5%. Thus, the dispute before me is confined to the reasonable profit rate which can be considered for disallowances. Having considered the overall facts and circumstances of the case and keeping in view the various decisions referred to by learned Commissioner (Appeals), I hold that the decision of learned Commissioner (Appeals) in restricting the disallowance to 12.5% being fair and reasonable deserves to be upheld. Accordingly, I do so.

7. In the result, appeals are dismissed.

Order pronounced in the open court on 25th June, 2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 25/06/2021

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