

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

BEFORE SHRI SAKTIJIT DEY (JM)

**ITA No. 7590/MUM/2019
Assessment Year: 2009-10**

Mr. Prashaant Manohar Jain, (legal heir of Smt. Veenaben M. Jain), Flat No. 1001, 10 th Floor, Mid Summer CHSL, Plot No. 94- B, Linking Road, Above Sketchers Showroom, Santacruz (West), Mumbai - 400054 PAN: ADCPJ6596P	Vs.	ITO – 23(3)(5), Room No. 231, 4 th Floor, Piramal Chambers, Lalbaug, Mumbai - 400012
(Appellant)		(Respondent)

Assessee by : Shri Vimal Punamiya (AR)

Revenue by : Shri Shiddaramappa (DR)

Date of Hearing: 25/05/2021
Date of Pronouncement: 09/07/2021

ORDER

This is an appeal by the assessee against order dated 16.09.2019 of learned Commissioner of Income Tax (Appeals)-55, Mumbai for the assessment year 2009-10.

2. The dispute in the present appeal is confined to disallowance made on account of alleged non genuine purchases.

3. Briefly the facts are, the assessee is an individual and is stated to be trading in metals. Based on information received from the Sales Tax Department, Government of Maharashtra through the DGIT (Inv.), Mumbai indicating that purchases of Rs. 23,81,273/- are non-genuine, as, the concerned selling dealers allegedly were only providing accommodation bills without actual sale transaction, the Assessing Officer (AO) reopened the assessment under section 147 of the Income Tax Act, 1961. In course of

assessment proceedings, the AO called upon the assessee to prove the purchases through supporting evidences. However, the evidences furnished by the assessee could not convince the AO. Further, the notices issued under section 133(6) of the Act seeking information from the concerned selling dealers did not evoked any response. Therefore, the AO concluded that the purchases referred to above are non genuine. However, considering the fact that the assessee has effected the sales, the AO concluded that the assessee must have purchase the goods from unverified sources by suppressing the actual profit. Accordingly, he disallowed Rs. 2,97,660/-, being 12.5% of the alleged non genuine purchases. Though, the assessee contested the aforesaid disallowance before learned Commissioner (Appeals), however, he was unsuccessful.

4. The learned Authorised Representative of the assessee submitted, the only defect pointed out by the Sales Tax Department is the selling dealers have not paid the applicable VAT. He submitted, for this reason, the assessee has paid to the Sales Tax Department the VAT due on the goods purchased. He submitted, when it is accepted that the assessee had purchased the goods, the disallowance at 12.5% is high and excessive as the profit rate generally attached to trading in ferrous and non-ferrous metals varies between 1 to 2%. He submitted, since the assessee has already shown gross profit rate of 2.53%, disallowance if any, can be restricted to 2%.

5. The learned Departmental Representative (DR), strongly relying upon the observations of AO and learned Commissioner (Appeals), submitted that learned Commissioner (Appeals) having already granted substantial relief to the assessee, no further interference is called for.

6. I have considered rival submissions and perused the material on record. Undisputedly, the deceased assessee was a trader in ferrous and non-ferrous metals. The fact that the assessee has purchased the goods has been accepted by the Departmental Authorities. Though, they have raised doubt regarding the source of purchases. For this reason alone, instead of disallowing the entire purchases, the disallowance has been restricted to the profit element embedded in the alleged non genuine purchases on purely estimation basis.

Considering the nature of business carried on by the assessee and the profit element generally expected to earn from such line of trading and also the gross profit rate already declared by the assessee, I am of the considered opinion, disallowance at 2% on the alleged non genuine purchases would be fair and reasonable. Accordingly, I direct the AO to restrict the disallowance to 2% of the alleged non genuine purchases. Grounds are partly allowed.

7. In the result, appeal is partly allowed.

Order pronounced in the open court on 9th July, 2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 09/07/2021
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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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