

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 3068/MUM/2019 (A.Y: 2011-12)

Shri Mahendranath Trivedi 221, Bussa Industrial Estate Prabhadevi, Mumbai - 400025 PAN: AAAPT6043J	v.	JCIT -18(2) Piramal Chambers, Parel Mumbai – 400 012
(Appellant)		(Respondent)

Assessee by	:	None
Department by	:	Shri Bharat Andhle
Date of Hearing	:	14.06.2021
Date of Pronouncement	:	14.06.2021

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)–48, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 19.03.2019 for the A.Y. 2011-12 in confirming the addition made by the Assessing Officer.

2. Briefly stated the facts are that, assessee an individual engaged in the business of fabrication of spare parts filed return of income on

22.09.2011 declaring income of ₹.3,28,87,502/- for the A.Y.2011-12. The case was selected for scrutiny assessment. During the course of assessment proceedings Assessing Officer observed that assessee had made purchases from M/s.Deepak Steel and Tube Traders for an amount of ₹.2,03,476/-. Assessee was required to prove the genuineness of the purchases made from M/s.Deepak Steel and Tube Traders by furnishing evidences for purchases, transportation of goods and asked to produce the party to substantiate the purchases. Assessee furnished the names and addresses of the suppliers from whom the purchases were made and also submitted that presumption cannot be the basis of assessment.

3. However, the Assessing Officer treated the purchases as non-genuine and he was of the opinion that assessee had obtained only accommodation entries. Assessing Officer issued notice issued u/s.133(6) of the Act to verify the transaction and existence of the parties but they have not responded. Assessing Officer deputed Inspector to serve notice u/s. 131 of the Act and the inspector reported that the premise at the given address is occupied by M/s.Maushuk and company from last three years and M/s. Deepak Steel and Tube Trader was not existed even before that. Therefore, Assessing Officer treated purchases of ₹.2,03,476/- as non-genuine and added to the income of the assessee.

On appeal the Ld.CIT(A) sustained the addition made by the Assessing Officer. Against this order of the Ld.CIT(A) assessee is in appeal.

4. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought by the assessee. Therefore, we proceed to dispose off this appeal on hearing Ld. DR on merits.

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

6. We have heard Ld. DR, 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 [356 ITR 451]. 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]. However, at the same time keeping in view the nature of business

of the assessee and the fact that the assessee is making some local purchases without any transportation bills, lorry receipts etc, the possibility of making purchases in gray market on cash cannot be ruled out. Taking the totality of facts and circumstances into consideration and following the decision of the Hon'ble Gujarat High Court in the case of CIT *v.* Simit P. Seth (supra), we direct the Assessing Officer to restrict the disallowance/addition to 12.5% of the bogus purchases. Accordingly, we direct the Assessing Officer to restrict the disallowance of purchases to 12.5% for the assessment year under consideration i.e. A.Y. 2011-12 and compute the income accordingly.

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

Order pronounced in the virtual court on 14.06.2021.

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Mumbai / Dated 14/06/2021
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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