

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

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER

**ITA NOs. 6603 & 6604/MUM/2019
(A.Ys: 2010-11 & 2011-12)**

Shri Hiraram T. Choudhary Sokhare Bhavan, 57 Room No. 4, Ground Floor 3 rd Kumbharwada, Mumbai -400004 PAN: AAAPC7750P	v.	Income Tax Officer -19(1)(5) Room No. 215, 2 nd Floor Matru Mandir, Tardev Road Mumbai – 400007
(Appellant)		(Respondent)

Assessee by	:	None
Department by	:	Shri Sanjay J. Sethi
Date of Hearing	:	13.07.2021
Date of Pronouncement	:	30.07.2021

ORDER

PER C.N. PRASAD (JM)

1. These appeals are filed by the assessee against common order of the Learned Commissioner of Income Tax (Appeals)-21, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 17.07.2019 for the A.Y. 2010-11 and A.Y.2011-12 in sustaining the addition @12.5% of the alleged non-genuine purchases made by the Assessing Officer.

2. Briefly stated the facts are that, assessee an individual engaged in the business of ferrous and non-ferrous metals filed return of income on 25.09.2010 and 22.09.2011 declaring income of ₹.2,87,380/- and ₹.4,12,240/- for the A.Y. 2010-11 and A.Y.2011-12 respectively, and the returns were processed u/s. 143(1) of the Act. Subsequently, Assessing Officer received information from the DGIT(Inv.), Mumbai about the accommodation entries provided by various dealers and assessee was also one of the beneficiary from those dealers. The assessments were reopened U/s. 147 of the Act based on the information received from DGIT (Inv.), Mumbai, that the assessee has availed accommodation entries from various dealers who are said to be providing accommodation entries without there being transportation of any goods. In the reassessment proceedings, the assessee was required to prove the genuineness of the purchases made from various dealers as referred in Assessment Order. In response assessee furnished copies of purchase invoice delivery challan, stock movement and bank statements and submitted that the purchases made are genuine. Assessee further submitted that the payments are made through account payee cheques as such contended that all the purchases are genuine.

3. Not convinced with the submissions of the assessee the Assessing Officer treated the purchases as non-genuine and he was of the opinion that assessee had obtained only accommodation entries without there being any transportation of materials and the assessee might have made purchases in the gray market. It is the finding of the Assessing Officer that assessee could not link the purchases with corresponding sales and Books of Accounts were also not produced for verification. Therefore, Assessing Officer treated ₹.8,14,129/- and ₹.16,17,314/- as non-genuine, being 12.5% of the total non-genuine purchases of ₹.65,13,022/- and ₹.1,29,38,500/- for the A.Y. 2010-11 and A.Y. 2011-12 respectively. On appeal the Ld.CIT(A) sustained the action of 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 assessee nor any adjournment was sought. Thus, I proceed to dispose off these appeal on hearing Ld.DR on merits.

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

6. 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 [38 taxman.com 385]. 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]. I agree with the view of the lower authorities that there should be an estimation of profit element from these purchases and should be estimated reasonably as the assessee could not conclusively prove that the purchases made are from the parties as claimed, especially in the absence of any confirmations from them. Taking the totality of facts and circumstances, keeping in view the nature of business of the assessee i.e. trader in Ferrous and non-Ferrous Metals, it would be justified if the profit element embedded in those purchases are estimated at 8%. Accordingly, I direct the Assessing Officer to estimate the profit element from the non-genuine purchases at 8% for both the Assessment Years

and restrict the disallowance of purchases to 8% and compute the income accordingly.

7. In the result, appeals of the assessee are partly allowed.

Order pronounced on 30.07.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board

Sd/
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated /07/2021
Giridhar, Sr.PS

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