

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI
BEFORE SHRI AMARJIT SINGH, JM AND SHRI MANOJ KUMAR
AGGARWAL, AM

आयकर अपील सं/ I.T.A. No.5141/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2011-12)

Hemraj Kanaram Choudhary Prop. Of M/s. Apollo Steel Industries Room No.11, 2 nd Floor, Narayan Building, Ardehirdady Street, Mumbai-400004.	<u>बनाम/</u> Vs.	ITO-19(1)(5) Room No.215, Matru Mandir, Tardeo Road, Mumbai-400007.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AHOPC0753H		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Ms. Smita Verma (DR)	

सुनवाई की तारीख / Date of Hearing: 07/07/2021
घोषणा की तारीख /Date of Pronouncement: 27/07/2021

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 29.05.2019 passed by the Commissioner of Income Tax (Appeals)-30, Mumbai (hereinafter referred to as the “CIT(A)”) relevant to the A.Y.2011-12.

2. The assessee has raised the following grounds: -

“1.1. On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeal)-30, Mumbai erred in enhancing the addition to Rs.17,89,397/- from Rs.2,23,675/- being



ITA No. 5141/Mum/2019

A.Y.2011-12

treating the genuine purchases of Rs.17,89,397/- as 100% non-genuine purchases without appreciating the law, facts and circumstances of the case.

The provisions of the Act ought to have been properly construed and regard being had to facts of the case no such addition should have been made. Reasons assigned by the Ld. Commissioner of Income Tax (Appeals)-30 are wrong and unlawful to justify the addition of Rs.17,89,397/-. The same to be deleted.

2. The order made under section 143(3) r.w.s. 147 of the Act by the learned Assessing Officer is bad-in-law, ultra virus and without appreciating the facts and law in their proper perspective and is liable to be annulled..”

3. We have heard the argument advanced by the Ld. Representative of the Department and has gone through the case carefully. We find that the CIT(A) has decided the matter of controversy in absence of the assessee and without giving an opportunity of being heard to the assessee in accordance with law, therefore, the finding of the CIT(A) is not justifiable, hence, is not liable to be sustained in the interest of justice. A proper and reasonable opportunity is required to be given to the assessee before the deciding the matter of controversy in accordance with law.

4. For this proposition we placed reliance upon the following case laws.

(1) CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 154 DTR (Bom) 302

(2) CIT Vs. S Chenniappa Mudaliar (1969) 74 ITR 1 (SC)



ITA No. 5141/Mum/2019
A.Y.2011-12

5. Accordingly in the interest of justice, we remit the issue raised in the appeal to the file of the Ld. CIT(A). Ld. CIT(A) is directed to consider the issue afresh and pass an order on the merits of the case after giving a proper opportunity of being heard to the assessee in accordance with law. Therefore, in the said circumstances, we are of the view that the order of the CIT(A) is not liable to be sustainable in the eyes of law, therefore, we set aside the finding of the CIT(A) on all the issues and restore the matter before the CIT(A) to decide the matter afresh by giving an opportunity of being heard to the assessee in accordance with law.
6. In the result, the appeal filed by the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 27/07/2021

Sd/-

(**MANOJ KUMAR AGGARWAL**)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 27/07/2021

Vijay Pal Singh (Sr. PS)

Sd/-

(**AMARJIT SINGH**)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No. 5141/Mum/2019
A.Y.2011-12

आदेश की 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**