

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.1043/M/2020  
Assessment Year: 2009-10**

Shri Ravikumar J. Shah, Room No.30, 3 <sup>rd</sup> Floor, 78/80, Gulal Wadi, Kika Street, CP Tank, Mumbai-400 004 <b>PAN: BCPPS5087K</b>	Vs.	ITO 19(3)(1), Matru Mandir, Tardeo Road, Mumbai - 400007
(Appellant)		(Respondent)

**Present for:**

Assessee by : Ms. Pooja Chhawachharia, A.R.  
Revenue by : Shri Bharat Andhale, D.R.

Date of Hearing : 08.09.2021  
Date of Pronouncement : 17.09.2021

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 12.09.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The only issue raised by the assessee is against the order of Ld. CIT(A) confirming the addition of Rs.94,04,277/- as made by the AO equal to 100% of the bogus purchases.

3. The facts in brief are that the assessee filed the return of income on 14.07.2009 declaring total income of Rs.3,52,591/- which was processed under section 143(1) of the Act. The case

of the assessee was thereafter reopened by the AO after receipt of information from DGIT (Inv.), Mumbai that assessee is beneficiary of hawala purchase entries to the extent of Rs.94,04,277/- and accordingly the notice under section 148 of the Act was issued on 28.02.2014. The AO called for various details and information from the assessee from time to time during the course of assessment proceedings which were not responded by the assessee. Finally, the AO framed the assessment ex-parte by treating the purchases as non genuine thereby making an addition of Rs.94,04,277/-, being 100% of the purchases, to the income of the assessee by framing assessment under section 144 read with section 147 of the Act dated 05.03.2015. In the appellate proceedings, the Ld. CIT(A) confirmed the order of AO.

5. After hearing the Ld. D.R. and counsel of the assessee and perusing the material on record, we observe that Ld. CIT(A) has confirmed the order of AO by rejecting the evidences filed by the assessee in the form of bills, vouchers, bank statements, corresponding sales and stock register showing the movement of stock. The Ld. CIT(A) instead harped on the finding of the AO that assessee has not responded to various notices issued by the AO and thus dismissed the appeal. The ld AR argued before us that the assessee could not appear before the AO because the notices were not served upon the assessee. We find merit in the arguments of the ld AR that in view of the nature of trade of trading in ferrous and non ferrous metals and GP rate during the year of 3.76%, a reasonable view may be taken. Having considered all the facts and arguments of both the parties and precedents of the coordinate benches in the similar cases , we

are of the considered view that the it would reasonable if a profit rate of 4% is applied on the bogus purchases. Accordingly we set aside the order of ld CIT(A) and direct the AO to apply a rate of 4%.

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

**Order pronounced in the open court on 17.09.2021.**

**Sd/-  
(Saktijit Dey)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 27.09.2021.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.