

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

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

**ITA.NO. 1428/MUM/2020 (A.Y: 2011-12)**

S.B. Panchal & Co. Unit No. 8, Jogani Industrial Estate Senapati bapat Marg Dadar (W), Mumbai - 400028  <b>PAN: AAAFS5950K</b>	v.	Income Tax Officer – 21(3)(2) Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Yazad Bajan</b>
<b>Department by</b>	<b>:</b>	<b>Smita Verma</b>
<b>Date of Hearing</b>	<b>:</b>	<b>14.09.2021</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>14.09.2021</b>

**ORDER**

**PER C.N. PRASAD (JM)**

**1.** This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) -33, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 30.12.2019 for the A.Y. 2011-12.

**2.** Assessee in its appeal has raised following grounds: -

*"This appeal is against the order dated 30.12.2019 of the Commissioner of Income Tax (Appeals) - 33, Mumbai, (hereinafter referred to as the "CIT(A)") in appeal against Order dated 05.02.2016 u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961,*

*passed by the income-tax Officer- 21(3)(2), Mumbai (hereinafter referred to as "the A.O.") and relates to the Assessment Year 2011-12.*

*The undermentioned grounds of appeal are without prejudice to one another-*

- 1. The CIT(A) erred in upholding notice dated 27.02.2015 u/s 148 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") as valid although the conditions precedent set out inter alia in s. 147 and 148 of the Act had not been complied with and the same ought to be held bad in law.*
- 2. The CIT(A) erred in upholding the addition of Rs.5,91,562/- towards alleged bogus purchases made by the A.O.*
- 3. The Appellant craves leave to add, alter and/or amend all/any foregoing Grounds of Appeal."*

**3.** At the time of hearing, Ld. Counsel for the assessee submitted that on instructions from the assessee Ground No. 1 is not pressed. Accordingly, Ground No. 1 is dismissed as not pressed.

**4.** Coming to Ground No. 2, Briefly stated the facts are that, assessee a firm engaged in the business of manufactures of pharmaceutical machines, filed return of income on 29.09.2011 declaring income of ₹.4,20,819/- for the A.Y.2011-12 and the return was 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 assessment was 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 parties as mentioned in the Assessment Order. In response assessee vide letter dated 05.02.2016 furnished copies of bills along with ledger confirmations, copies of delivery challans and copies of bank statement 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.

**5.** 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. Assessing Officer issued notice issued u/s.133(6) of the Act to verify the transaction and existence of the parties and the notices were returned back. Therefore, Assessing Officer treated ₹.5,91,562/- as non-genuine, being 25% of the total non-genuine purchases of ₹.23,36,247/- for the A.Y. 2011-12. On appeal the

Ld.CIT(A) sustained the action of the Assessing Officer in estimating the Gross Profit at 25% for the A.Y: 2011-12. Against this order of the Ld.CIT(A) assessee is in appeal, before us.

**6.** Ld. Counsel for the assessee reiterated the submissions made before and submitted that the addition made by the Ld.CIT(A) is on higher side, thus requested to reduce the same. Ld. Counsel for the assessee further submits that in assessee's own case the Tribunal in ITA.No. 4191/Mum/2019 dated 28.01.2021 for the A.Y.2009-10 restricted the disallowance of non-genuine purchases to 8% of such purchases. Therefore, Ld. Counsel for the assessee requested that addition be restricted to 8% following the Tribunal's order for assessment year A.Y: 2009-10.

**7.** Ld. DR vehemently supported the orders of the authorities below.

**8.** Heard both sides, perused the orders of the authorities below. It is observed that on identical facts the Tribunal in assessee's own case in ITA.No. 4191/Mum/2019 by order dated 28.01.2021 for the A.Y.2009-10 restricted the disallowance of non-genuine purchases to 8% observing as under: -

*"8. I have considered the rival submissions and perused the material on record. As regards the issue relating to re-opening of*

*assessment under section 147 of the Act, I find that after processing of return of income under section 143(1) of the Act, the Assessing Officer had received specific information from the Sales Tax Department that certain purchases claimed to have been made by the assessee during the year are non-genuine. Therefore, the Assessing Officer has tangible material in his possession to form a belief regarding escapement of income. Mentioning of a wrong figure in the reasons recorded, therefore, would not invalidate the proceeding. Therefore, I uphold the validity of re-opening of assessment under section 147 of the Act. As regards the merits of the issue, the assessment order itself reveals that the Assessing Officer accepts the fact that as against the purchases made, the assessee has effected corresponding sales. Therefore, he has only doubted the source of purchases, hence, has added back the profit element embedded in such purchases by estimating it @ 25%. Considering the fact that the disputed goods purchased by the assessee is steel, wherein, as per industry norms, the profit rate varies between 5% and 8% and further, the fact that the assessee has paid applicable VAT on such purchases to the Sales Tax Authorities because of the default made by the selling dealers, I am of the considered opinion that disallowance @ 8% of the alleged non-genuine purchases would be fair and reasonable. Accordingly, I direct the Assessing Officer to restrict the disallowance to 8% of the non-genuine purchases. The grounds raised by the assessee are partly allowed..”*

**9.** Following the said decision, we direct the Assessing Officer to recompute the income of the assessee by restricting the disallowance of non-genuine purchases to 8%. Ground No.2 of grounds of appeal is partly allowed.

**10.** In the result, appeal of the assessee is partly allowed.

Order pronounced in the virtual court on 14.09.2021.

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 14/09/2021  
Giridhar, Sr.PS

**Copy of the Order forwarded to:**

1. The Appellant
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**