

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

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

**ITA NO. 1794/MUM/2020 (A.Y. 2009-10)**

Income Tax Officer – 32(1)(8) Room No. 735, 7 <sup>th</sup> Floor Kautilya Bhavan Bandra Kurla Complex Bandra(E), Mumbai - 400051	v.	Shri Sandeep Baburav Birje Room No. 9, Sai Krupa Chawl Ramchandra pawaskar Road Dahisar (W), Mumbai -400068  <b>PAN: AJFPB3187K</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>None</b>
<b>Department by</b>		<b>Shri Sajay J. Shethi</b>
<b>Date of Hearing</b>	:	<b>23.09.2021</b>
<b>Date of Pronouncement</b>	:	<b>05.10.2021</b>

**ORDER**

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

**1.** This appeal is filed by the revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 44, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.01.2020 for the A.Y. 2009-10 in restricting the disallowance to 12.5% of purchases as against the 15% of purchases disallowed as non-genuine/bogus by the Assessing Officer.

**2.** Briefly stated the facts are that, assessee an individual deriving income from business and from other sources, filed return of income on 20.09.2009 for the A.Y.2009-10 declaring income of ₹.31,75,750/- and the return was processed u/s.143(1) of the Act. Subsequently, Assessing Officer received information from the DGIT (Investigation), 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 (Investigation), 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 the parties as referred in Assessment Order. Assessee submitted that the purchases made 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. Assessing Officer observed that the notices

issued u/s. 133(6) of the Act to the parties are returned unserved with a remark "left/not known" and the assessee has not produced the parties before the Assessing Officer. It is the finding of the Assessing Officer that the assessee failed to produce the parties in support of its claim that purchases are genuinely made from the parties. Therefore, Assessing Officer treated entire purchases of ₹.1,10,09,376 as non-genuine. However, he estimated the profit element on such purchases at ₹.16,51,405/- being 15% and ₹.1,00,380 towards unproved expenses and added to the income of the assessee. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee restricted the disallowance to an extent of 12.5% of the non-genuine purchases.

**4.** In spite of issue of notice none appeared nor any adjournment was sought. Therefore, I proceed to dispose of this appeal on hearing Ld.DR on merits.

**5.** Ld. DR vehemently supported the orders of the Assessing Officer.

**6.** Heard Ld.DR, perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A), I find that the Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of

the assessee and the averments in the Assessment Order and following decision of the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Sheth [356 ITR 451] restricted the addition to 12.5% of the non-genuine purchases. While holding so, the Ld.CIT(A) observed as under: -

**"5. Ground Nos. 3 to 9 raised by the appellant relate to the addition of Rs.16,51,406 being 15% of the purchases as non-genuine purchases. The AO has mentioned in the order that as per the information from the Sales tax department purchases were made by the assessee from the various suspicious dealers which are mentioned in Para 2 of the assessment order. During the course of assessment proceedings the assessee contended that the purchases were genuine. In order to ascertain the genuineness, the AO asked the assessee to furnish all the relevant evidence to establish that goods were actually supplied, to discharge the onus. In reply, the assessee did not file any reply nor did anyone attend the hearing. In view of the same, the AO held that the assessee failed to produce any documentary proof of purchases made from the alleged bogus parties. However considering that the assessee was in possession of goods allegedly purchased from specious dealers, the AO held Rs.16,51,406 being 15% of the purchases made from the said parties as bogus and not genuine and added to the income returned.**

5.1 I have perused the assessment order and the grounds of appeal as well as SOF of the assessee. The AO held in the assessment order that the appellant did not produce any details with regard to purchases and sale made. In the present case from the facts available on records, it is observed that the AO has neither disbelieved the purchases nor the corresponding sales made. The AO has held that the impugned purchases were not made from above referred dealers/parties but from somewhere else/grey market. The facts and circumstances of the present case are similar to that of facts adjudicated by the Hon'ble Gujarat High Court and Hon'ble ITAT, Mumbai in the case of CIT vs. Simit P Sheth, 356 ITR 451, where the court estimated at 12.5% of bogus purchases as additional profit. The estimation made by the AO at 15% is on higher side and more than the percentage determined by the courts in the above referred cases. Therefore, the profit is restricted to 12.5% of

*the bogus alleged purchases. The AO is directed add 12.5% of Rs.1,10,09,376 working out to Rs.13,76,172 and modify the addition accordingly. Appellant gets part relief. These grounds are partly allowed”*

**7.** On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, I do not find any infirmity in the order passed by the Ld.CIT(A) in restricting the addition/disallowance to the extent of 12.5% of the purchases. Grounds raised by the revenue are dismissed.

**8.** In the result, appeal of the Revenue is dismissed.

Order pronounced on 05.10.2021 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 05/10/2021  
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**