

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

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

**ITA NO. 1791/MUM/2020 (A.Y. 2009-10)**

DCIT – Circle -2 2 <sup>nd</sup> Floor, Mohan Plaza Building Sayle Nagar, Kadakapada Kalyan (W), Mumbai -421301	v.	Smt Shashikala R. Bohra Prop. Of M/s. Ferrocraft Enterprises A-98, Anand Nagar, Addl. MIDC Ambarnath (E), Mumbai -421506  <b>PAN: AFFPB9596Q</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>Shri Sunil Makhija</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>04.10.2021</b>

**ORDER**

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

**1.** This appeal is filed by the revenue against order of the Learned Commissioner of Income Tax (Appeals) – 3, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 11.02.2020 for the A.Y. 2009-10 in restricting the disallowance to 25% of purchases as against the entire purchases disallowed as non-genuine/bogus by the Assessing Officer.

**2.** Briefly stated the facts are that, the assessee engaged in the business of "manufacturer and exporter of vegetable oil mill plant, cotton seed and maize processing plant and machinery", filed return of income

on 30.09.2009 for the A.Y.2009-10 declaring income of ₹.5,65,582/- and the return was processed u/s.143(1) of the Act. Subsequently, Assessing Officer received information from the Sales Tax Department, 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 Sales Tax Department, 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 not responded to any notices and therefore Assessing Officer passed order u/s. 144 r.w.s. 147 of the Act on 27.09.2013 treating entire alleged bogus purchases of ₹.4,67,122/- as non-genuine 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 25% of the non-genuine purchases.

**3.** Ld. Counsel for the assessee reiterated the submissions made before Ld.CIT(A).

4. Ld. DR vehemently supported the orders of the Assessing Officer.
5. Heard both sides, 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 Tribunal in assessee's own case for A.Y. 2010-11 and A.Y.2011-12 restricted the addition to 25% of the non-genuine purchases.

While holding so, the Ld.CIT(A) observed as under: -

*"6. I have considered the facts of the case and the submission of the appellant. As the relevant purchases have been debited to the P&L Account and claimed as deduction in computing the profits of the business chargeable to tax, the onus was on the appellant to prove the genuineness of the purchases with satisfactory evidences. It is observed that the appellant, during the course of appellate proceedings has produced the copies of bills, showing material purchased from the alleged hawala parties, along with copies of ledger extracts, copies of bank statement, balance sheet, P&L A/c, etc,. During the remand report proceedings, AO requested the appellant to produce the parties but the appellant failed to do so. It is noted that the AO was in possession of information received from the Sales Tax Department, indicating strongly that the suppliers concerned were only providing accommodation entries and were not carrying out any real business. Thus, the onus that was cast on the appellant was of a greater degree, to prove the genuineness of the parties as well as these purchases. Under these circumstances the claim of the appellant that the said purchases are genuine cannot be accepted in totality.*

*6.1 Further, on the appellant preferring an appeal before the Hon'ble ITAT, in the case of the appellant herself for AY 2010-11 & AY 2011-2, the Hon'ble ITAT partly allowed the appeal holding that-*

*".....Para 5. We find that in this case the sales have not been doubted. It is settled law that when sales are not doubted, 100% disallowed for bogus purchase cannot be done. This proposition is supported from Hon'ble jurisdictional High Court decision in the case of Nikunj Eximp Enterprises. However,*

*the facts of the present case indicate that assesses has made purchase from the grey market. Making purchase through the grey market gives the assessee selling on account of non-payment of tax and others at the of the exchequer. In such situation, in our considered opinion, on the facts and circumstances of the case the 12.5% disallowance out of the bogus purchases meets the ends of justice. This is following the decision of the Hon'ble Gujarat High Court in the case of Simit P. Sheth [(2013) 356ITR 451], followed by the ITAT Mumbai Benches in a number of cases."*

*6.2 Considering the facts of case and in view of various decisions as discussed above, it is held that the appellant has made sales so the purchases cannot be totally bogus. Therefore only 25% of the bogus purchases of Rs 1,16,780/- out of Rs 4,67,122/- is to be added to the income of the appellant. Accordingly the disallowance of Rs 1,16,780/- is confirmed and balance amount of Rs. 3,50,342/- is deleted. The above grounds of appeal are partly allowed."*

**6.** 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 25% of the purchases. Grounds raised by the revenue are dismissed.

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

Order pronounced on 04.10.2021 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 04/10/2021  
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**

		Date	Initials	
1.	Draft dictated on:			Sr. PS/PS
2.	Draft placed before author:			
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	Dictation pad is enclosed			
8.	Date on which the final order is upload on the website of ITAT			
9.	File sent to the Bench Clerk:			
10.	Date on which file goes to the Head Clerk:			
11.	Date on which file goes to AR			
12.	Date of dispatch of Order:			