

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

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

**ITA NO. 5027/MUM/2019 (A.Y: 2011-12)**

Monish Kirtikumar Parekh D/2, 606, Sheetal Apartment Sarvodaya Paswanath Nagar Mumbai -400080  <b>PAN: AGBPP7565J</b>	v.	Income Tax Officer -29(2)(2) Kautilya Bhavan, C-41 to C-43 G-Block, Bandra Kurla Complex Bandra(E), Mumbai - 400051
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>Shri Mitali Gopani</b>
<b>Department by</b>	:	<b>Shri Sanjay J. Sethi</b>
<b>Date of Hearing</b>	:	<b>29.09.2021</b>
<b>Date of Pronouncement</b>	:	<b>04.10.2021</b>

**ORDER**

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

**1.** This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)-40, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.06.2019 and 15.10.2019 for the A.Y. 2011-12.

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

*"1. The Ld.CIT(A) has erred in law and in facts in confirming the action of the Assessing Officer in re-opening of the assessment u/s. 147 of the Act which is invalid and bad in law.*

*2. The Ld.CIT(A) has erred in law and in facts in confirming the disallowance of alleged bogus purchases of ₹.7,63,108/- being 12.50% of ₹.61,04,870/-."*

**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 an individual engaged in the business of "retailer in computers and computer parts" filed return of income on 30.09.2011 declaring income of ₹.9,97,680/- for the A.Y.2011-12 and later on the case is selected by issued of notice u/s. 148 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. In the assessment proceedings, the assessee was required to prove the genuineness of the purchases made from various dealers as referred in Assessment Order. In response assessee furnished copies of balance sheet, Profit and Loss Account, computation of income, bills, ledger account copies and payment details 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. It is the finding of the Assessing Officer that assessee failed to produce the parties and as such the Books of Accounts remained unverifiable. Therefore, Assessing Officer treated ₹.7,63,108/- as non-genuine being 12.5% of the total alleged non-genuine purchases of ₹.61,04,870/- 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 12.5% for the A.Y: 2011-12. Against this order of the Ld.CIT(A) assessee is in appeal.

**6.** Ld. Counsel for the assessee submitted that learned Pr.Commissioner of Income-tax-29, Mumbai [hereinafter in short "Pr.CIT"] by order dated 23.03.2017 passed u/s. 263 of the Act for the A.Y. 2009-10 directed the Assessing Officer to adopt the profit element at 5.94% on the bogus purchases. Ld. Counsel for the assessee submits that Pr.CIT also taken note of the fact that the department has worked out average Gross Profit for the years from A.Y. 2006-07 to A.Y. 2010-11 is at 5.94% and therefore directed to adopt the Gross Profit at 5.94% on the bogus purchases for the A.Y. 2009-10. Ld. Counsel for the assessee submits that similar percentage may be adopted for the assessment year under consideration i.e., A.Y. 2011-12.

7. Ld. DR vehemently supported the orders of the authorities below.
8. Heard both sides, perused the orders of the Authorities below and also perused the order of the Pr.CIT who directed the Assessing Officer to adopt Gross Profit at 5.94% on bogus purchases for the A.Y. 2009-10. It is noticed that the revenue has arrived at average Gross Profit at 5.94% taking the Gross Profits for the financial years 2006-07 to 2010-11 and the Pr.CIT thus adopted the Gross Profit at 5.94% for the purpose of disallowing the bogus purchases. keeping in view the average Gross Profits furnished by the assessee and the order of the Pr.CIT passed during the A.Y. 2009-10, I direct the Assessing Officer to adopt profit element of the alleged bogus purchases at 6% and restrict the disallowance to 6% of the alleged bogus purchases as against 12.5% adopted.
9. In the result, appeal of the assessee is partly allowed.

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**