

**आयकर अपीलीय अधिकरण “SMC” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष ।  
BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

**आयकर अपील सं./ ITA No. 1222/Mum/2020**  
(निर्धारण वर्ष / Assessment Year 2010-11)  
&  
**आयकर अपील सं./ ITA No. 1223/Mum/2020**  
(निर्धारण वर्ष / Assessment Year 2011-12)

The Income Tax Officer-26(2)(5) 319,3 <sup>rd</sup> Floor Kautilya Bhavan Bandra Kurla Complex, Pratyakshakar Bhavan, BKC, Bandra (E)-400 051	Vs.	Raghunath Baburao Mohite Shop No.8, Hill NO.1 Zahoor Nagar, Saima Market Kherani Road Saki Naka,Mumbai-400 072
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं. / PAN No. ALAPM4180G</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	None
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri Vivek Perampurna, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	27.10.2021
घोषणा की तारीख / <b>Date of pronouncement :</b>	27 .10.2021

**आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष के द्वारा /  
**PER MAHAVIR SINGH, VP:**

1. These two appeals by the revenue are arising out of orders of the Commissioner of Income Tax (Appeals)-38, Mumbai [in short CIT(A)], in appeal Nos. CIT(A)-38/ITO-26(2)(1)/IT.11197/2016-17 and CIT(A)-38/ITO-26(2)(1)/IT.463 vide dated 30.09.2019. The Assessments were framed by the Income Tax Officer, Ward-26(2)(1) Mumbai (in short ITO/ AO) for the A.Ys. 2010-11 & 2011-12 vide orders even date 20.09.2016 under section 144 read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').



2. The only common issue in these two appeals of revenue is as regards, the order of Ld.CIT(A) restricting the profit rate on bogus purchases @ 12.5% as against addition made by AO @ 100%. For this revenue has raised identical in grounds and facts and circumstances are also identical in both the years. Hence, I will take up ITA No. 1222/Mum/2020 for AY 2010-11 and will decide the issue. The revenue has raised various grounds, but issue is only one out of the same as noted above.

3. Brief facts are that the assessee is engaged in the business of manufacturing of wooden boxes for packaging. The AO received information from DGIT (Investigation), who in turn received information from Sales Tax Department, Government of Maharashtra that the assessee has obtained bogus bills of purchases from the accommodation entry providers. The assessee is beneficiary and has obtained bogus bills from the following party.

S.N	TIN	Name of the Party	Amount(Rs.)
1	27750595164V	Deep Enterprises	2,72,188

4. The AO disallowed the bogus purchases amounting to Rs. 2,72,188/-. Aggrieved, assessee preferred appeal before CIT(A).

5. The Ld.CIT(A) after considering the submissions of the assessee restricted the profit rate @ 12.5% by observing in para 8.2.4 as under:-



8.2.4 Here it important to consider two aspects i) Whether the entire purchase transactions of the appellant during the impugned assessment year is non-genuine or ii) whether only the purchases made from the aforesaid dealers is non-genuine. While in the former entire purchase should be disallowed, in the later, only the benefit accruing to the appellant as a result of such purchases should be added as the income of the appellant. In this case, it is observed that the AO has not doubted the corresponding sales. Therefore, it is presumed that while the purchases as per the purchase invoice issued by the aforesaid parties have been recorded in the books of the appellant the goods were purchased from the Grey Market. The same was observed in the remand report submitted by the AO vide letter dated 20.08.2019 which was forwarded by the Addl. CIT, Range-26(2), Mumbai vide letter dated 21.08.2019, In light of the above facts and judicial propositions it could be a situation that the appellant has not made genuine purchases from the above hawala dealers and the goods were purchased from other suppliers who did not issue invoices/bills. Such indulgence in purchasing goods from the grey market and obtaining bogus bills from other parties is practised for getting some percentage of benefits. The magnitude of benefit will depend on the facts of each case. In this regard, reliance is placed on the decision rendered by the Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth (2013) (Gujarat), 38 Taxman.com 385 wherein it is held that the profit element embedded in the purchases should be added. The rate at which purchases are made from undisclosed parties is much lower than the rate of credit purchases, on account of evasion of sales tax and other taxes. Keeping this factor in mind, the profit element embedded in the bogus purchases estimated by A.O. @ 100% is considered excessive. I therefore, direct the AO to restrict the same to 12.5% of total bogus purchases which



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*works to **Rs.34,024/-** and balance amount of **Rs.2,38,164/-** be deleted. This ground of appeal is accordingly, partly **allowed.**"*

6. Aggrieved, revenue is in appeal before us.

7. I have heard Ld. Sr.DR Shri Vivek perampurna, but none is present from assessee's side. I noted from the facts of the case that the assessee before the AO, as well as before CIT(A) filed documents like sales and purchase bills, bank statements, evidencing that the assessee as made payment by account pay cheque to the purchaser parties and received payment from the seller parties. The assessee has also submitted audit report, bank statement, copy of ledger account, copy of purchase bills in the respect of alleged party for purchases, but, the assessee could not produce the party before the AO for examination and could not file any supporting evidence like delivery challans, transportation bills and Octroi receipts etc. Considering the facts in entirety, I noted that Ld.CIT(A) restricted the profit rate @ 12.5%. For this reasoning recorded by Ld.CIT(A) was that assessee might have obtained accommodation bills i.e bogus purchases bills from the above party, but might have purchase goods from grey market at a lower price. In this process, the assessee might have saved VAT. The Ld.CIT(A) has rightly restricted the profit rate @ 12.5% by following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P.Shet (2013) (Gujarat), 38 taxmann.com 385. I find no infirmity in the order of Ld.CIT(A) and hence, the same is confirmed. The appeal of the revenue is dismissed.



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8. Similar are the facts in ITA No. 1223/Mum/2020 for AY 2011-12. Hence, taking a consistent view, I dismiss this appeal also, exactly one same reasonings.

**9. In the Result, both the appeals of revenue are dismissed.**

Order pronounced in the open court on 27 .10.2021.

Sd/-  
(महावीर सिंह /MAHAVIR SINGH)  
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 27 .10.2021  
Kasarla Thirumalesh, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asth. Registrar)/ व.निजी सचिव  
(Sr.PS)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai