

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

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

**ITA NOS. 2049, 2050 & 2051/MUM/2020  
(A.Ys: 2011-12, 2009-10 & 2010-11)**

M/s. S.P Traders 501, Blue Bird Apartment Kirti College Lane Prabhadevi, Dadar (W) Mumbai - 400028  <b>PAN: AAAFS0967N</b>	v.	Income Tax Officer – 21(3)(2) Piramal Chambers, Lalbaug Mumbai – 400 012
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>None</b>
<b>Department by</b>	<b>:</b>	<b>Shri Sanjay J. Sethi</b>
<b>Date of Hearing</b>	<b>:</b>	<b>30.09.2021</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>03.11.2021</b>

**ORDER**

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

**1.** These appeals are filed by the assessee against common order of Learned Commissioner of Income Tax (Appeals)–30, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 11.11.2019 for the A.Y. 2009-10, 2010-11 and 2011-12.

2. Assessee has raised identical grounds in its appeals except for figures. Grounds raised by the assessee for the A.Y. 2009-10 are as under: -

**“ON JURISDICTION:**

1. *In the facts and circumstances of the case and in law, the order passed by the Learned Commissioner of Income Tax (Appeals) - 33, Mumbai [“the Ld. CIT (A)” for short] confirming the assessment order u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 [“the Act” for short] passed by the Income Tax Officer - 21(3)(2), Mumbai (“the AO” for short) is bad in law and void.*

2. *While affirming the said order the Ld. CIT (A) grossly erred in not appreciating that:*

*(i) The assessment order passed by the Ld. AO is itself non-est, bad in law and void-ab-initio since the same is passed on a non-existent entity since the assessee firm got dissolved by operation of law on the death on 20/09/2011 of Smt. Taraben Trambaklaj Mehta one of the only two partners of the firm and hence the firm ceased to exist;*

*(ii) The jurisdictional notices u/s 148 and 143(2) are defective in issuance and there has been no service as contemplated under the Act and therefore the entire assessment proceedings based on the said notices are also bad in law; and;*

*(iii) In any case, the necessary pre-conditions for initiation and completion of a re-assessment u/s 147 / 148 of the Act are not fulfilled in the present case and hence the same is void;*

3. *In the facts and circumstances of the case and in law, the order so passed by the Ld. CIT(A) as well as that passed by the Ld. AO deserve to be quashed being void for want of jurisdiction.*

**ON FAILURE OF NATURAL JUSTICE:**

4. *In the facts and circumstances of the case and in law, the order passed by the Ld. CIT (A) is bad in law since the same is passed in gross violation of principles of Natural Justice in as much as:*

*(i) No fair and reasonable opportunity of being heard was given to the Appellant before passing the impugned order;*

*(ii) The first notice of hearing was not at all served to the Appellant since the same was issued on the wrong address and on receipt of the second notice of hearing, the Ld. CIT(A) was duly intimated about the inability of the Learned Chartered Accountant to appear before the Ld. CIT(A) and despite the same, the Ld. CIT(A) passed the order ex-parte without taking cognizance of the same; and;*

*(iii) In any case, the Ld. CIT(A) has passed his order confirming the order of the Ld. AO without even considering the material available on*

record, based on totally irrelevant considerations and ignoring the relevant material and considerations.

5. In the facts and circumstances of the case and in law, the order passed by the Ld. CIT(A) deserves to be quashed.

**ON MERITS:**

6. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the AO in making a disallowance of Rs. 1,80,8607- being 25% of the alleged tainted purchases from certain parties without appreciating that:

(i) The disallowance made by the AO is on surmises and conjectures based on totally irrelevant considerations while ignoring the relevant material and considerations;

(ii) The disallowance is made without stating any provision of the Act under which the same could be disallowed; and;

(iii) In any case, the credit for the Gross Profit already offered on the said purchases must be granted before making the impugned disallowance.

7. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs.915,778/- made by the AO on account of difference in the balance of the debtor M/s Premium Transmission Ltd. in the books of the Assessee vis-a-vis that of the Assessee in the books of that debtor without appreciating that:

(i) The Closing balance of the debtor in the books of the Assessee is properly reconciled with that of the Assessee in the books of the Debtor;

(ii) In any case, the balance reflected in the books of the Assessee is higher by the said amount and therefore, if in the opinion of the AO the same is incorrectly reflected, it would actually amount to reduction in the amount of sales and the income should be computed accordingly by reducing an amount of Rs. 9,15,778/- from the total sales of the Assessee; and;

(iii) In any case, even assuming without accepting that the Ld. AO is correct, despite that adding the said amount again, which is admittedly receivable from the said debtor, would amount to taxing the same income twice which is impermissible under the Act and hence even on this count the addition deserves to be deleted.”

**3.** In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought. Therefore, I proceed to dispose of these appeals on hearing the Ld. DR on merits.

**4.** Heard Ld. DR, perused the orders of the authorities below. On a perusal of the Ld.CIT(A) order, I find that even though the Ld.CIT(A) provided opportunity on multiple occasions assessee could not appear before the Ld.CIT(A). Considering the totality of facts and circumstances of the case and keeping in view the additions/disallowance made by the Assessing Officer, in the interest of justice I am of the opinion that assessee should be given one more opportunity of being heard. Thus, these appeals are restored to the file of the Ld.CIT(A) for denovo adjudication in accordance with law. Assessee is directed to appear before the Ld.CIT(A) and shall cooperate with the appellate proceedings without taking unnecessary adjournments. Thus, these appeals are restored to the file of the Ld.CIT(A) accordingly.

**5.** In the result, appeals of the assessee are allowed for statistical purpose.

Order pronounced on 03.11.2021 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 03.11.2021  
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**