

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

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

**ITA NO. 6980/MUM/2019 (A.Y: 2010-11)**

Smt Alpa Rajesh Desai 327, Makharia House SVP Road, Opera House Mumbai - 400027  <b>PAN: AELPD3053K</b>	v.	Income Tax Officer -17(3)(1) Room No. 621 Piramal Chambers, Lalbaug Mumbai – 400 012
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>None</b>
<b>Department by</b>	:	<b>Ms. Kranti Yadav</b>
<b>Date of Hearing</b>	:	<b>10.11.2021</b>
<b>Date of Pronouncement</b>	:	<b>10.11.2021</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)–30, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 05.08.2019 for the A.Y. 2010-11 in enhancing the purchases to the extent of 100% of ₹.29,29,259/- as against ₹.10,08,634/- of the alleged non-genuine purchases disallowed by the Assessing Officer, without deleting the entire disallowance.

**2.** Briefly stated the facts are that, assessee engaged in the business of trading in Bright Steel Bars and Wire Rods, filed return of income on 21.09.2010 declaring income of ₹.14,25,670/- for the A.Y.2010-11 and the return was processed u/s. 143(1) of the Act. Subsequently, the case was selected for scrutiny by issuing notice u/s. 143(2) of the Act. Assessing Officer based on 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, required the assessee to prove the genuineness of the purchases of ₹.29,29,259/- made from M/s. Geeta Bright. In response assessee vide letter 06.02.2013 furnished copies of purchase indicating the material, quantity, date of payment, cheque numbers and amounts 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.

**3.** Not convinced with the submissions of the assessee the Assessing Officer treated peak of the purchases of ₹.10,08,634/- from M/s. Geeta Bright 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" and the assessee has not produced the parties before the Assessing Officer. It is the finding of the Assessing Officer that assessee failed to produce the parties and as such the purchases to the extent made from the parties are remained unverifiable. Therefore, Assessing Officer treated purchases of ₹.10,08,634/- as non-genuine being peak amount of the total purchases claimed by the assessee. On appeal however, the Ld.CIT(A) enhanced the disallowance to 100% of purchases of ₹.29,29,259/- made from M/s. Geeta Bright relying on the decision of the Hon'ble Bombay High Court in the case of Shoreline Hotel Pvt. Ltd., [98 taxmann.com 234] which was passed under the context of section 236 of the Act. Against this order of the Ld.CIT(A), assessee is in appeal.

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

**5.** Ld.DR vehemently supported the orders of the authorities below.

**6.** Heard Ld.DR, perused the orders of the authorities below. An identical issue has come before the Coordinate Bench in the case of

Shri Pravin C. Bokadia v. ITO in ITA.No. 3552/Mum/2019 dated 17.07.2020 wherein the Ld.CIT(A) enhanced the addition to 100% of non-genuine purchases relying on the decision in the case of Shoreline Hotel Pvt. Ltd., (supra) and the Tribunal considering the decision of the Hon'ble Jurisdictional High Court in the case of M. Haji Adam & Co. (ITA.No. 1004 of 2016 dated 11.02.2019) directed the Assessing Officer to make the disallowance in accordance with the ratio of the decision of the Hon'ble Bombay High Court in the case of M. Haji Adam & Co. (supra). On a perusal of the Coordinate Bench decision in the case of Shri Pravin C. Bokadia v. ITO (supra), I find that the Ld.CIT(A) enhanced the disallowance to 100% of the non-genuine purchases placing reliance in the case of Shoreline Hotels Pvt. Ltd., (supra), the Tribunal noticed the distinguishing features of the Hon'ble Bombay High Court decision in the case of Shoreline Hotels Pvt. Ltd., (supra) to the cases where there is a disallowance made under non-genuine purchases and the observation of the Tribunal is as under: -

*"7. Upon assessee's appeal learned CIT(appeals) has enhanced the addition to hundred percent. In doing so she has referred to the honourable jurisdictional High Court decision in the case of Shoreline Hotels Pvt. Ltd.(supra). It is settled law that case law cannot be considered in isolation of the context thereof. This is duly the ratio arising out of the decision of honourable Supreme Court in the case of Sun Engineering Works Pvt. Ltd. (198 ITR 2970. In the decision of Shorteline Hotels Pvt. Ltd. (supra) considered by the Hon'ble Bombay High Court was in context of the order passed by*

*learned CIT(A) under section 263 of the income tax act, wherein the ITAT had upheld the order of the learned CIT, invoking his jurisdiction u/s. 263. The issue was expenditure incurred in the maintenance by a hotel. In contrast the present case is a case where the assessee is a dealer in steel and disallowance has been done by the Assessing Officer on a finding that the assessee has made purchases through grey market.*

*8. In our considered opinion by no stretch of imagination it can be said that there is any similarity in the facts upon which the honourable jurisdictional High Court has rendered the above said decision and the facts of the present case."*

**7.** Thus, I am of the opinion that the Ld.CIT(A) is not correct in enhancing the disallowance to 100% of the genuine purchases placing reliance on the decision of the Hon'ble Bombay High Court in the case of Shoreline Hotels Pvt. Ltd., (supra).

**8.** It is not in dispute that sales have been accepted as genuine from out of these purchases. When the sales have been accepted as genuine the entire purchases cannot be treated as non-genuine. The Hon'ble Gujarat High Court in the case of Bholanath Polyfab Pvt. Ltd [355 ITR 290] held that when the assessee made purchases and sold the finished goods as a natural corollary not the entire amount covered under such purchases would be subject to tax but only the profit element embedded therein. Similar view has been taken by the Hon'ble Gujarat High Court in the case of CIT *v.* Simit P. Seth [38 taxman.com 385]. Simply because the parties were not produced the entire purchases cannot be added as

held by the Bombay High Court in the case of CIT *v.* Nikunj Eximp [216 Taxman.com 171].

**9.** I agree with the view of the lower authorities that there should be an estimation of profit element from these purchases and should be estimated reasonably as the assessee could not conclusively prove that the purchases made are from the parties as claimed, especially in the absence of any confirmations from them. Taking the totality of facts and circumstances, keeping in view the nature of business of the assessee i.e. trader in Bright Steel Bars and Wire rods, it would be justified if the profit element embedded in those purchases are estimated at 12.5%. Accordingly, I direct the Assessing Officer to estimate the profit element from the non-genuine purchases at 12.5% and restrict the disallowance of purchases to 12.5% and compute the income accordingly.

**10.** In the result, appeal of the assessee is partly allowed.

Order pronounced in the virtual court on 10.11.2021.

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 10/11/2021  
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**