

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&**

SHRI AMARJIT SINGH, JUDICIAL MEMBER

**ITA No.424/Mum/2021
(Assessment Year :2009-10)**

&

**ITA No.425/Mum/2021
(Assessment Year :2010-11)**

Income Tax Officer, Ward-4(1), Thane Room No.03, A-Wing 6 th Floor, Ashar IT Park Wagle Industrial Estate Thane (W)- 400 604	Vs.	Shri Ashok Sriram Bhalerao Prop. Of M/s. Sai Shardhha Traders 357, At & Post-Khaniwade Vasai – 401 303
PAN/GIR No.AGCPB5543K		
(Appellant)	..	(Respondent)

Revenue by	Shri Prasoon Kabra
Assessee by	None
Date of Hearing	22/11/2021
Date of Pronouncement	25/11 /2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

These appeals in ITA No.424/Mum/2021 & 425/Mum/2021 for A.Yrs.2009-10 & 2010-11 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-3, Mumbai in appeal No.11050/2015-16 dated 03/08/2020 (Id. CIT(A) in short) against the order of assessment passed u/s.144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as

Act) dated 28/01/2015 by the Id. Income Tax Officer, Wd 4(1), Thane (hereinafter referred to as Id. AO).

As identical issues are involved in both these appeals, they are taken up together and disposed of by this common order for the sake of convenience.

2. At the outset we find that the appeals are time barred by 131 days. We find that assessee has filed a delay condonation petition explaining the fact that due to Covid-19 pandemic lockdown was imposed from 24/03/2020 and by placing reliance on the Government of India of notification No.218979 dated 31/03/2020 in Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance 2020 (No.2 of 2020) dated 31/3/2020 as per Clause 3(1)(b) extending the time limit specified in Income Tax Act which falls during the period from 20th day of March 2020 to 29th June 2020 for the purpose of filing appeal till 30/06/2020 or such other date as the Central Government by notification specify in this behalf. Subsequently, the Government vide Notification No.35/2020 dated 24/06/2020, has extended the said time limit up to 31/03/2021. In view of the same, we are inclined to condone the delay of 131 days in filing the appeal of the assessee and admit the appeals for adjudication.

3. The only effective identical issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in adding only the profit element embedded in the value of ingenuine purchases @25% as against 100% made by the Id. AO.

4. None appeared on behalf of the assessee. We have heard Id. DR and perused the materials available on record. We find that assessee is

an individual deriving income from trading in building materials. Pursuant to the information received from Sales Tax department, Government of Maharashtra, the assessment of the assessee was reopened u/s.147 of the Act after due recording of reasons for reopening the assessment wherein it was observed that assessee had made purchases from certain tainted dealers. Accordingly, the Id AO held that the purchases made from such parties were ingenuine. The Id. AO based on this information proceeded to make addition @100% of value of purchases made by the assessee from the tainted dealer. The Id. CIT(A) however, observed that though the assessee could not satisfactorily explain the genuineness of the purchases made from the aforesaid tainted party, still the assessee has produced the copy of ledger extracts, copy of stock register, copy of sales bills with delivery challans etc., Since the corresponding sales made out of disputed purchases were not doubted by the Id. AO, only the profit element could be brought to tax, despite the fact that the notice issued u/s.133(6) of the Act remain uncomplied. Accordingly, he estimated the profit element @25% of the value of purchases made from the grey market. Aggrieved by this order, only the Revenue is in appeals before us for both the years and assessee has not preferred any appeal before us.

5. We find that this Tribunal in series of decisions has been consistently holding the profit element embedded in the value of such disputed purchases to be at 12.5% depending upon the industry in which the assessee is engaged in. But the Id. CIT(A) had already estimated 25% which is actually higher than 12.5% being regularly estimated by this Tribunal and since the assessee has not preferred any appeal against the order of the Id. CIT(A) before us, we do not deem it fit to interfere in the order of the Id. CIT(A) and accordingly, the grounds raised by the Revenue are dismissed.

6. In the result, both the appeals of the Revenue are dismissed.

Order pronounced on 25/ 11 /2021 by way of proper mentioning
in the notice board.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 25/ 11/2021
KARUNA, *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, Mumbai