

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

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.474/Mum/2021  
(Assessment Year :2010-11)**

|   |     |  |
|---|-----|--|
| The Income Tax Officer-<br>26(2)(1)<br>Kautilya Bhavan<br>Room No.315, 3 <sup>rd</sup> Floor<br>Bandra Kurla Complex<br>Bandra (East)<br>Mumbai – 400 051 | Vs. | Mr. Nasir Abdul Quddus<br>Khan<br>Shop No.7, Madni Estate<br>L.B.S. Marg, Sonapur<br>Bhandup (W)<br>Mumbai – 400 078 |
| <b>PAN/GIR No. ANVPK9906F</b>   |     |  |
| <b>(Appellant)</b>  | ..  | <b>(Respondent)</b>  |

|                              |                       |
|------------------------------|-----------------------|
| Revenue by                   | Shri Suresh Periasamy |
| Assessee by                  | None                  |
| <b>Date of Hearing</b>       | <b>11/11/2021</b>     |
| <b>Date of Pronouncement</b> | <b>25/ 11 /2021</b>   |
|                              |                       |

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.474/Mum/2021 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-40, Mumbai in appeal No.CIT(A), Mumbai-40/11083/2014-15 dated 18/02/2020 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 27/10/2014 by the Id. Income Tax Officer 23(1)(3), Mumbai (hereinafter referred to as Id. AO).

2. At the outset we find that the appeal filed by the Revenue is delayed by 347 days. In support of the same, the Id. Assessing Officer has filed a condonation petition stating the reason that due to Covid-19 Pandemic, lockdown was announced and that the office of the Income Tax department was not functioning with full strength. The Revenue has placed reliance on the Government of India 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 20<sup>th</sup> day of March 2020 to 29<sup>th</sup> 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 above, the delay of 347 days is hereby condoned and the appeal of the Revenue is admitted for adjudication.

2.1. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in restricting the profit element embedded in the value of bogus purchases to 12.5% as against 100% made by the Id. AO in the facts and circumstances of the instant case.

3. None appeared on behalf of the assessee. We have heard the Id. DR and perused the materials available on record. We find that assessee is engaged in the business of trading in iron and steel and had filed its return of income for the A.Y.2010-11 on 26/08/2010 declaring total income of Rs.3,39,060/-. The Id. AO observed that assessee had made purchases from six parties totaling to Rs.46,64,936/- as below whose names appear to be tainted dealers in the website of sales tax department of Government of Maharashtra:-

| <b>Sr. No.</b> | <b>Particulars</b>    | <b>Amount</b>      |
|----------------|-----------------------|--------------------|
| 1              | Balaji Trading        | 11,44,026/-        |
| 2              | V M Udyog             | 16,03,838/-        |
| 3              | Somnath International | 2,88,106/-         |
| 4              | Shradhha Trading      | 4,56,593/-         |
| 5              | Saj Enterprises       | 5,51,349/-         |
| 6              | Sun Enterprises       | 6,21,024/-         |
|                | <b>TOTAL</b>          | <b>46,64,936/-</b> |

3.1. This information was admittedly passed on to the Id.AO by the Sales Tax department of Government of Maharashtra through the DGIT (Investigation Wing) of Income Tax department, which triggered the reopening of assessment in the case of the assessee. In the re-assessment, the Id. AO observed that assessee could not prove the genuinity of the purchases made from the six parties as notices issued u/s.133(6) of the Act by the Id. AO were returned unserved. Accordingly, the Id. AO proceeded to disallow the entire value of purchases u/s.69C of the Act in the re-assessment. Before the Id. CIT(A), the assessee filed various evidences which were duly forwarded to the Id.AO vide letter dated 29/09/2016 seeking for a remand report. The assessee pleaded that all the payments were made to the aforesaid suppliers by account payee cheques through regular banking channels and from the purchase bills, input tax credit has been eventually availed by the assessee as per the tax invoice issued by the registered dealers and that all the transactions made from them are genuine and the purchases made from the aforesaid six parties were duly sold and without the purchases there cannot be corresponding sales. The assessee also furnished the GP ratio derived by it from A.Ys. 2008-09 to 2013-14. The assessee also furnished the entire VAT returns filed to the Government authorities together with VAT assessment order. The Id. CIT(A) however, observed that since those parties were classified as tainted dealers and that

they had admitted on oath before the sales tax department that they had given accommodation entries without actually supplying the goods and since the assessee had made purchases from those parties, the genuineness of the transactions could not be conclusively proved by the assessee. However, the Id. CIT(A) observed that since the sales made by the assessee are not disputed and that without purchases there cannot be sales, only the profit element thereon, could be brought to tax. This profit element was estimated by the Id. CIT(A) @12.5% and accordingly, partial relief was granted to the assessee. We find that aggrieved by this order, the assessee is not in appeal before us and only Revenue is in appeal before us.

3.2. We find that this Tribunal in series of decisions has been estimating profit @5% for iron and steel industry and since assessee has not preferred any appeal against the order of the Id. CIT(A) before us, we uphold the order of the Id. CIT(A) estimating the profit element @12.5% by stating that the profit estimated by the Id. CIT(A) is already on the higher side and no further profit element is required to be added in the facts and circumstances of the instant case. Accordingly, the grounds raised by the Revenue are dismissed.

**4. In the result appeal of the Revenue is dismissed.**

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

**Sd/-**  
**(PAVAN KUMAR GADALE)**  
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**