

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

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

ITA NO. 1435/MUM/2019 (A.Y. 2011-12)

Income Tax Officer – 27(1)(4) Room No.409, 4 th Floor Tower No. 6 Vashi Railway Station Complex Vashi, Navi Mumbai - 400703	v.	M/s. Inka Engineers Unit No. A 15A Ghatkopar Industrial Estate LBS Marg, Ghatkopar (W) Mumbai - 400086 PAN: AAAF12286A
(Appellant)		(Respondent)

Assessee by	:	Dinkel Hariya
Department by	:	Abdul Hakkem
Date of Hearing	:	24.11.2021
Date of Pronouncement	:	25.11.2021

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 26, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 14.12.2018 for the A.Y. 2011-12. The revenue challenged the order of the Ld.CIT(A) in estimating the profit element from bogus purchases at 12.5%.

2. Ld. Counsel for the assessee submits that identical issue came up before the Tribunal for A.Y. 2010-11 in ITA.No. 1434/Mum/2019 dated 27.05.2020 and the Tribunal upheld the order of the Ld. CIT(A) in estimating the profit element at 12.5%.

3. Ld. DR vehemently supported the orders of the Assessing Officer. Ld.DR also placed reliance in the case of Pratibha Pipes and Structural Ltd., v. DCIT in ITA.Nos. 3874, 3875, 3876/Mum/2015 and ITA.No. 7120/Mum/2016 dated 10.04.2019.

4. Heard both sides, perused the orders of the Authorities below. It is observed from the order of the Tribunal for A.Y. 2010-11 in ITA.No. 1434/Mum/2019 dated 27.05.2020 on identical issue the Tribunal upheld the order of the Ld.CIT(A) in estimating the profit element at 12.5% observing as under: -

"5. After hearing both the parties and perusing the material on record, we observe that in this case undoubtedly, the assessee is beneficiary of hawala purchase entries from four parties aggregating to Rs.8,03,416/-. The assessee has furnished bills, vouchers and payment details before the AO in support of the purchases. The notices issued, under section 133(6) to the supplier were not served upon the parties and returned with the remark "left". We note that the assessee filed delivery challans, transport with bank statement and tried to prove the purchases. However, AO did not accept the same and made 100% addition. In the appellate proceedings, the Ld.CIT(A) reduced the by addition to 12.5% by following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth (supra) wherein the High Court has held that it would be reasonable,

if the profit margin on the bogus purchases are brought to tax and directed at 12.5% of the bogus purchases. We have examined in depth the records as placed before us and the order of Ld.CIT(A) and found that the order passed by Ld. CIT(A) is quite reasoned and speaking one and does not need to be interfered with. Accordingly, we are inclined to uphold the same by dismissing the appeal of the Revenue.”

5. On a perusal of the order of the Ld.CIT(A), I do not find any valid reason to interfere with the finding of the Ld.CIT(A) in estimating the profit element at 12.5% as the Ld.CIT(A) following the decision of the Hon'ble Gujarat High Court in the case of following the CIT *v.* Simit P. Sheth [356 ITR 451] estimated the profit element at 12.5%. Grounds raised by the revenue are dismissed. The decision relied on by the Ld.DR in the case of Pratibha Pipes and Structural Ltd., *v.* DCIT in ITA.Nos. 3874, 3875, 3876/Mum/2015 and ITA.No. 7120/Mum/2016 dated 10.04.2019 are distinguishable on facts. Grounds raised by the revenue are dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced on 25.11.2021 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 25/11/2021
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