

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

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

**ITA NOs. 1784, 1785 & 1786/MUM/2020  
(A.Ys: 2009-10, 2010-11 & 2013-14)**

M/s. Gold Ancher Exim Pvt. Ltd., BA 205/206, 2 <sup>nd</sup> Floor Rajlaxmi Commercial Kalher, Biwandi Thane - 421302  <b>PAN: AACCG3982E</b>	v.	ACIT – 12(2)(3) Aayakar Bhavan, M.K. Road Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Shri Hiro Rai</b>
<b>Department by</b>	<b>:</b>	<b>Shri Sanjay J. Sethi</b>
<b>Date of Hearing</b>	<b>:</b>	<b>23.09.2021</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>25.11.2021</b>

**ORDER**

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

**1.** These three appeals are filed by the assessee against different orders of the Learned Commissioner of Income Tax (Appeals)-20, Mumbai [hereinafter in short "Ld.CIT(A)"] for the A.Ys. 2009-10, 2010-11 and A.Y. 2013-14 in estimating the Gross Profit element from the purchases made from various parties referred to in the Assessment Order at 12.5%

2. Heard both sides, perused the orders of the Authorities below. It is noticed that Identical issue has been considered by the Tribunal for the A.Y. 2008-09 in ITA.No. 1783/Mum/2020 dated 08.10.2021 wherein the Tribunal estimated the Gross Profit element from the purchases at 1%. The Tribunal taking note of the fact that the suppliers supplied only fabrics to the assessee and on examining the sample invoices the Tribunal found that there is no eligibility for levy of value added tax (VAT) on fabrics estimated the probable element of profit on purchases at 1%. Similar, is the situation in the present appeals also as is evident from the sample invoice in the case of Natasha Enterprises filed by the assessee before me it is noticed that the assessee is not liable to pay any VAT on purchase of fabrics. The Tribunal while estimating the Gross Profit element at 1% for the A.Y. 2008-09 made the following observations: -

*"3.2. We find that the Ld. AR vehemently argued that there is no dispute that the aforesaid five suppliers had only supplied fabrics to the assessee and in support of which he enclosed certain sample invoices from the aforesaid suppliers. He also drew our attention to the fact that on fabrics there is no eligibility for levy of value added tax (VAT). He explained the logic behind estimating the profit element at 12.5% to be the VAT rate at 10% + incidental profit arising to the assessee for making cash purchase from the grey market at 2.5%. Since, there is no levy of VAT on purchase of fabrics, only incidental profit could be brought to tax. He pleaded that the incidental profit may be estimated at 1% of the value of ingenuine purchases.*

*3.3. Per contra, the Ld. DR vehemently relied on the order of the lower authorities by stating that the suppliers were not produced by the assessee before the Ld. AO and notices u/s. 133(6) of the Act were returned unserved. Hence, the assessee has not discharged its onus at all to prove the veracity of the purchases.*

*3.4. We find that there is no dispute that assessee is trading in fabrics and that the purchases made from the aforesaid five suppliers were in respect of purchases of fabrics. It is not in dispute that the sales made out of purchases made from aforesaid five suppliers were not doubted by the Revenue. It is not in dispute that purchase of fabrics does not get eligible for levy of VAT. Hence, the profit element to be estimated on the value of ingenuine purchases should certainly exclude the VAT portion in the instant case and only incidental benefit that assessee derives by making purchases out of cash in the grey market should be ultimately brought to tax. We find that under similar circumstances, the Co-ordinate Bench of this Tribunal in the case of Max Realities LLP vs. DCIT in ITA No.7544/Mum/2019 and ITA No. 161/Mum/2020 for A.Y.2010-11 dated 16/08/2021 had estimated the incidental profit element at 1%. Respectfully following the said decision, we direct the Ld. AO to add only 1% of value of ingenuine purchases of Rs.5,67,01,954/- (i.e. Rs.5,67,019/-) and delete the remaining portion. Accordingly, the ground raised by the assessee is partly allowed."*

**3.** The findings of the Tribunal for the A.Y. 2008-09 squarely applies to the facts of the assessee's case for the later assessment years also as the parties are identical and facts are identical. Following the said order, I direct the Assessing Officer to estimate the Gross Profit element from tainted purchases at 1% as against 12.5% estimated by the Ld.CIT(A). Accordingly, the grounds raised by the assessee are partly allowed.

**4.** In the result, appeals of the assessee are partly allowed.

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**