

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI M. BALAGANESH (ACCOUNTANT MEMBER) AND  
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)**

**ITA No. 52/MUM/2022  
Assessment Year: 2010-11**

**&**

**ITA No. 53/MUM/2022  
Assessment Year: 2011-12**

J.K. Brothers,  
B/131, Simandhar City,  
Trimandir Sankul, Ahmedabad  
Kalol Highway, Adalaj,  
Gandhinagar-382421.

**PAN No. AADFJ5267 B**

**Appellant**

Income Tax Office Ward-1,  
Gandhinagar-382017.

**Vs.**

**Respondent**

Assessee by : Mr. Deepak Shah, AR  
Revenue by : Ms. Samruddhi Hande, DR

Date of Hearing : 26/05/2022  
Date of pronouncement : 31/05/2022

**ORDER**

**PER PAVAN KUMAR GADALE, JM**

These two appeals are filed by the assessee against the separate orders of CIT(A) National Faceless Appeal Centre (NFAC) Delhi passed u/s 143(3) and 250 of the Income Tax Act, 1961 (in short 'the Act'). Since the issues in these appeals are common and identical, hence are clubbed, heard and consolidated order is passed.

For the sake of convenience, we shall take up appeal in ITA No. 52/Mum/2022, for A.Y 2010-11 as a lead case and facts narrated. The assessee has raised following grounds of appeal:

- 1. The Ld. CIT(A) erred both in law and on facts in confirming the additions of Rs.28,57,418/- being a 12.5% of the alleged bogus purchases made by the appellant to the tune of Rs.2,28,59,344/-.*
- 2. The Ld. CIT(A) erred on the facts that the proper opportunity was not given to the appellant for making submissions as the appellant has changed his address and move to Ahmedabad.*

2. The Brief facts of the case are that, the assessee is a partnership firm and is engaged in the business of ferrous and non-ferrous metals. The assessee has filed the return of income for the assessment year 2010-11 on 27.09.2010 declaring a total income of Rs.1,01,817/- and the return of income was processed u/s 143(1) of the Act. The Assessing Officer (A.O.) has received the information from DGIT(Inv) Wing Mumbai that the assessee was involved in obtaining the bogus purchase bills as per the Sales Tax Department Maharashtra. The Assessing Officer has reason to believe that there is escapement of income and issued notice u/sec148 of the Act. In compliance to notice, the Ld. AR appeared from time to time and submitted the information. The Assessing Officer has issued notice u/s 143(2) and

142(1) of the Act. The Assessing Officer observed that the assessee is a beneficiary of purchase bills from the entities whose name appeared in the website of Sales Tax Department Mumbai. The assessee has obtained the bogus purchase bills from 20 parties aggregating to Rs.2,28,59,344/-.The Assessing Officer in order to verify the genuiness of the transactions has called for the information of the parties, bills, details of transportation and other documentary evidence in respect of transactions. The Assessing Officer after receipt of the information and in order to test check the genuineness of the transactions has issued notice u/s 133(6) of the Act. But the said notices were returned back with endorsement from the postal parties not known or left. The Assessing Officer has issued the show cause notice and called for the additional information. The Assessing Officer was not satisfied with the information and has estimated the profit element @12.5% of bogus purchases which work out to Rs.28,57,418/- and assessed the total income of Rs.29,59,235/- and passed order U/sec143(3) r.w.s.147 of the Act dated 22-03-2016.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). Whereas the Ld. CIT(A) considered the findings of the Assessing Officer and the submissions of the assessee and dismissed the assessee's appeal . Aggrieved

by the CIT(A) order, the assessee has filed an appeal before the Honble Tribunal.

4. At the time of hearing, The Ld.AR submitted that the CIT(A) has erred in dismissing the appeal overlooking the change in the address of the assessee. Further, the contentions of the Ld. AR that the assessee is dealing in ferrous and non ferrous metals and estimating the income @12.5% of alleged bogus purchases is on the higher side and substantiated with G.P.Ratio and the Paper Book and prayed for allowing the appeal. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material available on record. The sole grievance of the Ld.AR that the lower authorities have erred in estimating the profit element on non-genuine purchases @ 12.5% of the bogus purchases is on high pitched. The contentions of the Ld.AR, that the assessee has treated the purchases in the books of accounts and the Gross profit rate (G.P.) is covered on the purchases and referred to the page 6 of the Paper Book. The Ld.AR emphasized that the return of income was filed considering the alleged bogus purchases. We find the submission of the Ld.AR are based on the material information which cannot be over looked. But at the same time, the action of the assessee in indulging in obtaining the

purchase bills cannot be disputed/ ruled out and therefore the A.O. has estimated the profit element @ 12.5%. We considering the facts, circumstances and to meet the ends of justice restrict the addition @6% as against @12.5% of bogus purchases. Further we make it clear that this estimation is applicable for this assessment year and for A.Y.2011-12 only. Accordingly, we modify the order of the CIT(A) in restricting / sustaining the addition @6% and partly allow the grounds of appeal of the assessee.

6. In the result, both the assessee's appeals ITA.No 52&53/M/2022 are partly allowed.

**Order pronounced in the open Court on 31/05/2022.**

Sd/-

**(M. BALAGANESH))  
ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE  
JUDICIAL MEMBER**

Mumbai;

Dated: 31/05/2022

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**

		Date	Initials	
	Original dictation pad is enclosed at the end of file			
1.	Draft dictated on: Computer	26.05.2022		Sr. PS/PS
2.	Draft placed before author:	30.05.2022		Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	File sent to the Bench Clerk:			
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			
10.	Date of dispatch of Order:			