

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

**BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
MS KAVITHA RAJAGOPAL, HON'BLE JUDICIAL MEMBER**

ITA NO. 463/MUM/2022 (A.Y: 2011-12)

M/s. Ganpat Steel Industries Office No. 12, Kolsawala Building 1 st Floor, 67, Dr. M.G. Mahimutra Street Mumbai - 400004 PAN: AAGFG3758B	v.	Income Tax Officer – 19(1)(3) Matru Mandir, Nana Chowk Mumbai – 400 007
(Appellant)		(Respondent)

Assessee by	:	Shri Vimal Punmiya
Department by	:	Shri Vaibhav Jain
Date of Hearing	:	08.08.2022
Date of Pronouncement	:	22.08.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)–30, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 18.07.2019 for the A.Y.2011-12.

2. Assessee has raised following grounds in its appeal: -

"1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income tax (Appeals) erred in

enhancing addition to Rs.19792181/- being 100% of non-genuine Purchases as against addition made by the Assessing Officer of Rs. 2474023/- being 12.50% of alleged non-genuine purchases. Provisions of the Act ought to have been properly construed and regard being had to facts of the case addition made of Rs. 19792181/- kindly be deleted.

2. *On the facts and in the circumstances of the case and in law the learned Commissioner of Income tax (Appeals) failed to provide adequate opportunity of hearing before making enhancement in addition to total income to the extent of Rs. 19792181/*

3. *On the facts and in the circumstances of the case and in law the learned Commissioner of Income tax (Appeals) erred in confirming rejection of books of accounts of the appellant by invoking provisions of section 145(3) of the Act.*

4. *On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) failed to appreciate that*

(a) Proceeding initiated under section 147 /148 of the Act is on the basis of reason to suspect and not on reason to believe.

(b) There is no new tangible material in possession of the Assessing Officer which justify issuance of notice u/s 148 of the Act.

(c) The initiation of proceeding under section 147 of the Act and issuance of notice under section 148 is without jurisdiction, bad in law and contrary to the provisions of the Act and liable to be cancelled/ annulled

5. *On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming order made under section 143(3) rws 147 of the Act by the learned Assessing Officer and erred in enhancing the addition which is without jurisdiction, illegal, bad-in-law, ultra vires and without allowing reasonable opportunity of the hearing, without appreciating the facts, submission and evidences in their proper perspective, without providing copies of material used against the appellant, without providing cross examination of persons whose statements are relied upon, is liable to be annulled.*

6. *The learned Commissioner of Income Tax (Appeals) erred in confirming charging of interest under section 234A, 234B, 234C and 234D of the Act.*

7. *The appellant crave leave to add, amend, alter and / or vary any of the grounds of appeal before or at the time of hearing."*

3. At the time of hearing, Ld. AR brought to our notice that, similar ground which assessee has raised before the Coordinate Bench in ITA.No. 6427/Mum/2019 for the A.Y.2009-10 and the Coordinate Bench has considered and adjudicated the issue by estimating the Gross Profit @6% on bogus purchases. Ld. AR brought to our notice Para No. 4 of the Tribunal order and copy of the order is placed on record. Ld. AR prayed that similar percentage of addition may be sustained.

4. Ld. DR relied on the orders of the Ld.CIT(A).

5. Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2009-10 and estimated the Gross Profit @6% on bogus purchases, while holding so the Coordinate Bench held as under: -

"4. Submissions made by ld. DR heard, orders of authorities below examined. Undisputedly, the assessee has failed to discharge its onus in proving genuineness of purchases from alleged hawala dealers. Under such circumstances, entire alleged bogus purchases cannot be added. It is only the profit embedded in such transactions that has to be brought to tax. The assessee is a trader in ferrous and non-ferrous metals. Generally, the GP in such business is ranges between 5% to 8%. Estimation of GP at 12.5% by AO/CIT(A) is on higher side. The estimation of GP at 6% on bogus purchase would meet the ends of justice. The

impugned order is modified accordingly. The ground no. 3 & 4 of appeal are partly allowed in the aforesaid terms."

- 6.** Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2009-10 and also following rule of "Principle of Consistency", we direct the Assessing Officer to estimate the Gross Profit at 6% on bogus purchases. Grounds raised by the assessee is allowed.
- 7.** With regard to other grounds of appeal raised by the assessee, as Ld. AR has not put-forth any arguments before us, accordingly, the same are dismissed.
- 8.** In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 22nd August, 2022

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER
Mumbai / Dated 22.08.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

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