

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM**

आयकरअपीलसं./ I.T.A. No. 2383/Mum/2021  
(निर्धारणवर्ष / Assessment Year: 2011-12)

<b>ACIT Cir-20(1),</b> R. No. 615, 6 <sup>th</sup> floor, Piramal Chambers, Parel, Mumbai-400 012	<b>बनाम/ Vs.</b>	<b>Shailesh Navinchandra Shah,</b> 6-321, Ravikiran, 1 <sup>st</sup> floor, Deodhar Road, Matunga CR Mumbai-400019
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAYPS6030Q		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Ms. Neeta Jeph, Ld. DR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri Viraj Mehta, Ld. AR
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	29.08.2022
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	29.08.2022

आदेश / O R D E R

**Per Amit Shukla, Judicial Member:**

The aforesaid appeal has been filed by the revenue against the impugned order dated 29.10.2021, passed by National Faceless Appeal Centre, Delhi for the quantum of assessment passed u/s 143(3) for AY 2011-12. The revenue has raised the following grounds:-

1. *"Whether on the facts and in the circumstances and in law, the Ld. CIT(A) erred in restricting the addition on account of bogus purchases to 25% of total bogus purchase ignoring the fact that the Sales Tax Department has proved beyond doubt that the parties declared as hawala traders were involved in providing accommodation entry of purchases and the assessee was one of the beneficiary of accepting accommodation for the purchase."*
  2. *"Whether on the facts and in the circumstances and in law, the Ld. CIT(A) erred in not appreciating the fact that the assessee failed to produce the parties for verification, in spite of opportunity provided by the AO."*
  3. *"This case is filed because it is covered under the exception provided in para 10(e) of the CBDT's Circular no.3 of 2018 dated 11.07.2018 as amended vide F.No.279/Misc. 142/2007-ITJ(Pt) dated 20.08.2018."*
  4. *The appellant prays that the order of Ld. CIT(A), NFAC on the above ground be reversed and that of the Assessing Officer be restored.*
  5. *The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*
2. At the outset, the tax effect on the disputed issue is below Rs. 50 lacs and as per Circular No.17 of 2019 dated 08.08.2019 [F.No.279/Misc.142/2007-TTJ(Pt.) issued by the Central Board of

Direct Taxes (CBDT), Department of Revenue, Ministry of Finance, Government of India, the CBDT has revised the monetary limit for filing appeals before the ITAT from the existing limit of Rs. 20 lacs to Rs. 50 lacs.

3. However, Ld. Departmental Representative (DR) contented that it falls within the exception provided in para 10(e) of the CBDT circular no. 3 of 2018 dated 11.07.2018, which reads as under:-

*(e) Where addition is based on information received from external sources in the nature of law enforcement agencies as CBI /ED /DRI /SFIO /Directorate General of GST Intelligence (DGGI).*

4. From the perusal of the assessment order, it is seen that the information is not based on any external source but from DGIT Investigation, Mumbai, therefore it does not falls within the aforesaid exception. Thus the said Clause will have no impact on this issue.

5. In any case, Ld. CIT(A) while applying GP rate on bogus purchase had followed various ITAT decision which now is full covered by the decision of Hon'ble Bombay High Court in the case of **PCIT vs. Md. Haji Adam & Co. (ITA No. 1044/2016) order**

**dated 11<sup>th</sup> February 2019**, wherein it has been held that application of GP rate at 12.5%.

6. Accordingly, we dismiss the appeal of the revenue in limini as not maintainable on account of law tax effect in term of aforesaid CBDT circular (supra).

7. In the result, the appeal filed by the revenue stands **dismissed** in limini.

*Orders pronounced in the open court on 29<sup>th</sup> August, 2022.*

*Sd/-*  
(Amit Shukla)  
Judicial Member

मुंबई Mumbai;दिनांक Dated : 29.08.2022  
Sr.PS. Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**.उप/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**