

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI PRASHANT MAHARSHI (ACCOUNTANT MEMBER) &  
SMT. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 2316/MUM/2019 (A.Y.2009-10)

DCIT(LTU-I), Mumbai 29 <sup>th</sup> Floor, Center-I, World Trade Centre, Cuffe Parade, Mumbai-400 005	vs	M/s CMI FPE Ltd Plot No.64, Mehta House Road No.13, MIDC , Andheri (E) Mumbai-400 093 <b>PAN : AAACF0252G</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	Mr. Jas Sanghavi
Department represented by	Shri Nihar Ranjan Samal, Sr. AR

Date of hearing	29/06/2022
Date of pronouncement	20/09/2022

**ORDER**

**Per Kavitha Rajagopal (JM):**

This appeal has been filed by the Revenue as against the order of the Ld. Commissioner of Income-tax (Appeals)-3, Mumbai dated 15/11/2018 passed under section 250 of the Income-tax Act, 1961 pertaining to assessment year 2009-10.

2. This is a recalled matter. It is to be noted that the present appeal was earlier dismissed by the co-ordinate bench vide order dated 07/09/2020 on the ground of low tax effect. Thereafter, the matter was recalled in MA No.159/Mum/2021 vide order dated 29/04/2022 at the instance of Revenue

that the same would be covered by the exception provided under paragraph 10(e) of the CBDT circular No.17 of 2019 dated 08/08/2019. Thus, the matter again came up for consideration on merits.

3. The solitary ground involved in this appeal is that the Ld.CIT(A) has erred in deleting the disallowance of purchases from V3 Enterprises made by the Assessing Officer.

4. The brief facts are that the assessee is engaged in manufacturing and installation of cold rolling mills, galvanizing lines, colour coating lines, tension levelling lines, skin pass mills, acid regeneration plants and pickling lines for ferrous and non-ferrous industries worldwide. The assessee has filed its return of income on 30/09/2009 declaring total income at Rs.45,37,83,890/- under the normal provisions of the Act and had computed profit of Rs.17,68,56,100/- under the provisions of section 115JB of the Act. The case was selected for scrutiny and assessment order dated 16/12/2012 determining total income at Rs.46,64,49,540/-. The assessee's case was subsequently reopened under section 147 of the Act vide notice under section 148 issued on 28/03/2014. Assessment order under section 143(3) read with section 147 of the Act dated 30/03/2015 was passed determining total income at Rs.46,96,13,080/- wherein a disallowance of Rs.35,50,000/- was made pertaining to payments made to V3 Enterprises for purchase of M.S. plates. The assessee was in appeal before the Ld.CIT(A) on the ground of reopening the assessment and on the additions made by the Assessing Officer. The Ld.CIT(A) has dismissed the ground of appeal pertaining to reopening of the assessment on the basis that reopening was made on the basis of information received from Investigation Wing and that the Assessing Officer had reopened the said assessment by duly following the process of law. On the ground of addition made by the Assessing

Officer, the Ld.CIT(A) deleted the said addition on the pretext that the assessee is not at fault when the seller is not traceable or is involved in dubious acts. The Ld.CIT(A) relied on the decision of Hon'ble jurisdictional High Court in the case of CIT vs Nikunj Eximp Enterprises (P) Ltd 372 ITR 619 (Bom). Aggrieved by this, the Revenue is in appeal before us on the ground of deletion of disallowance of purchases from V3 Enterprises.

5. The Ld.DR contended that the assessee's case was reopened subsequent to the assessment order passed under section 143(3) on the basis of information received from Investigation Wing that M/s V3 Enterprises with whom the assessee had transaction with, was appearing in the list of non genuine dealers in the website of sales-tax department, Government of Maharashtra. The Ld.DR further stated that M/s V3 Enterprises was involved in issuing bogus sales invoices and that they were not involved in any business activities. The Ld.DR vehemently opposed to the deletion of addition of Rs.35,50,000/- pertaining to the transaction of goods by the assessee from M/s V3 Enterprises on the ground that these were not genuine transactions and that the assessee had taken only accommodation entry from the said enterprise. The Ld.DR relied on the decision of the Assessing Officer.

6. The Ld.AR, on the other hand, contended that the assessee had purchased M.S. plates for Rs.35,28,377/- in the month of April, 2008 from M/s V3 Enterprises for which the assessee has substantiated by producing the ledger account, invoices, goods receipt notes, delivery challans and payment details before the lower authorities. The Ld.AR further stated that the assessee has also provided list of other suppliers of M.S. plates alongwith addresses and the price charged by them and also the purchase order and note on process of material purchased from the alleged dealer. The assessee has

further provided the copy of cheque and the bank account number of the alleged company. The Ld.AR submitted that since the assessee did not have transaction with the alleged dealer post April, 2008, the assessee was unable to furnish the correct address of the said company. The Ld.AR contended that the said transaction was genuine and that the assessee has discharged its onus before the lower authorities and relied on the decision of the Ld.CIT(A).

7. Having heard both the rival submissions and perused the materials on record, we are of the considered opinion that the assessee has purchased M.S. plates from various dealers out of which M/s V3 Enterprises was alleged to be an accommodation entry provider. It is evident from the record that the assessee has furnished the details of the suppliers along with their addresses and the price quoted for the materials purchased. The only contention of the department is that the alleged dealer's name appeared in the website of sales-tax department, Government of Maharashtra to be non genuine dealer. Apart from this, the Assessing Officer has not shown any corroborative evidences to prove that the said transaction is only a bogus transaction for the purpose of providing accommodation entry. The assessee, on the other hand, has proved the genuineness by furnishing the details of cheque, the bank account number, the invoices, delivery challans and other details evidencing the purchase of M.S. plates to the tune of Rs.35,78,377/-. The assessee has relied on the decision of DCIT vs Adinath Industries 252 ITR 476 (Guj), which held that the assessee cannot be penalised for the action of supplier and that the assessee cannot be expected to know the commercial rationale on how this supplier operates its bank account which was considered by the Ld.CIT(A). The Ld.CIT(A) has relied on the decision of the jurisdictional High Court in the case of CIT vs Nikunj Eximp Enterprises (P) Ltd (supra) on the ground that the

assessee cannot be faulted if the seller is not traceable and also that it is not the burden of the assessee to investigate the genuineness of the seller or their business transaction. Respectfully following the above judicial precedent, we hold that there is no infirmity in the order of Ld.CIT(A). The grounds of appeal filed by the Revenue are dismissed.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 20<sup>th</sup> September, 2022.

Sd/-

sd/-

<b>(PRASHANT MAHARSHI)</b>	<b>(KAVITHA RAJAGOPAL)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dated: 20/09/2022

Pavanan

**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

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**