

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

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
SMT KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.8026/Mum/2019  
(Assessment Year :2009-10)**

M/s. Reliable Ball Bearing Stores 169, Mutton Street Opp. Null Bazar Mumbai – 400 008	Vs.	ITO 20(3)-1, Mumbai 621, 6 <sup>th</sup> Floor Piramal Chambers Lalbaug, Parel Mumbai – 400 012
<b>PAN/GIR No.AAFFR1220C</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Amit Jhaveri
Revenue by	Shri Manoj Kumar Singh
<b>Date of Hearing</b>	<b>06/09/2022</b>
<b>Date of Pronouncement</b>	<b>06/09/2022</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M.):**

This appeal in ITA No.8026/Mum/2019 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-28, Mumbai in appeal No.CIT(A)-28/ITBA-149/ITO-17(3)(1)/2015-16 dated 14/10/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 27/03/2015 by the Id. Income Tax Officer-20(3)(1), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance made on account of unverifiable purchases in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. As per the noting in the assessment order, the assessee is engaged in the business of reselling of old and second hand tools and bearings. The assessee is an individual and had filed his return of income for the Asst Year 2009-10 on 24/09/2009 declaring total income of Rs 64,930/-, which was duly processed u/s 143(1) of the Act. Later this assessment was sought to be reopened u/s 147 of the Act on the pretext that assessee had obtained accommodation entry in the form of bogus purchase from M/s Nina Enterprises in the sum of Rs 34,89,397/-, based on the information received from the Sales Tax Department of Government of Maharashtra, wherein this supplier had been treated as tainted dealer in its website. The validity of reopening is not in challenge before us. In the course of reassessment proceedings, the Id. AO sought to verify the veracity of purchases made by the assessee from M/s Nina Enterprises. The assessee furnished all the details that were called for by the Id. AO in the reassessment proceedings. Later a notice u/s 133(6) of the Act was issued by the Id. AO to M/s Nina Enterprises seeking confirmation of transactions with the assessee. The Id. AO had duly observed in Page 2 of his order that M/s Nina Enterprises had duly confirmed its sale transaction with the assessee. Despite this, the Id. AO based on the sales tax department's information proceeded to add the profit element embedded in the said purchases at 12.5% and made disallowance of Rs 4,36,174/-. We find that the Id. CIT(A) had confirmed this action of the Id. AO on the ground that M/s Nina Enterprises was not produced by the assessee before the Id. AO. In this regard, the Id. AR before us placed evidences on record to prove that M/s Nina Enterprises had duly filed its income tax returns upto Asst Year 2021-22 which goes to prove that the said party is very much in

existence. The Id.AR also stated that the said supplier name has been removed from the list of hawala dealers in the data maintained by the Sales Tax Department, Government of Maharashtra. This fact has not been controverted by the revenue before us. It is not in dispute that the purchases made from M/s Nina Enterprises were duly exported by the assessee. The entire details of purchases together with the corresponding sales made by the assessee were duly furnished by the assessee before the lower authorities. The sales (export) made by the assessee is not disputed by the revenue. The assessee had also duly furnished the TIN, PAN, invoices, bank statements , evidences for exporting the goods purchased together with the confirmation from the supplier. The Id. AR also agreed to the fact that assessee is willing to produce the supplier before the Id. AO. Hence we deem it fit and appropriate to remand this issue to the file of Id. AO for examining the supplier in person to ascertain the veracity of purchase transactions made by the assessee. The assessee is also directed to take all efforts to produce the supplier in person before the Id. AO. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

**4. In the result, the appeal of the assessee is allowed for statistical purposes.**

Order pronounced in open Court on 06/09/2022.

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 06/09/2022  
KARUNA, 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,

(Sr. Private Secretary / Asstt. Registrar)  
**ITAT, Mumbai**