

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

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 528/MUM/2020 (A.Y. 2010-11)

Alok Madangopal Todi Flat No. 5, 2 nd Floor Bedekar Building, HF society Road Jogeshwari (E), Mumbai - 400060 PAN: AADPT0044Q	v.	ACIT – Circle – 19(1) Room No. 203, 2 nd Floor Matru Mandir, Tardev Road Mumbai – 400 007
(Appellant)		(Respondent)

Assessee by	:	Shri R.S. Khandelwal
Department by	:	Shri Manoj Sinha
Date of Hearing	:	08.09.2022
Date of Pronouncement	:	20.09.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals)-30, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 08.11.2019 for the A.Y. 2010-11.

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

"(1) On the facts and in law, the Ld. CIT (A) erred in confirming additions made solely on the basis of list of "suspicious dealers" uploaded on website of Sales Tax Dept., without proving that alleged bogus parties have actually provided accommodation entries to appellant.

(2) On the facts and in law, the Ld. CIT (A) erred in upholding purchases made from alleged bogus parties as accommodation entries, ignoring the fact that appellant is a trader and there are documentary evidences available to substantiate purchases i.e. payments were made by account payee cheques, quantitative records are maintained and for every purchase there was corresponding sales which has been accepted by AO.

(3) On the facts and in law, the Ld. CIT (A) erred in enhancing income by Rs. 2,79,56,655/- (being difference between Rs. 3,19,50,463/- @ 100% and Rs. 39,93,808/- @ 12.5% added by the AO) without appreciating the fact that sales is not disputed by Ld. AO as assessee being a trader and there can not be sales without purchase.

(4) On the facts and in law, the Ld. CIT (A) erred in not giving credit of GP already declared on alleged bogus purchases and/or restricting it to GP rate of other genuine purchases.

(5) Appellant prays for leave to add, amend or delete any ground/s of appeal on or before the final date of hearing."

3. At the outset, Ld. AR of the assessee submitted that Ld.CIT(A) passed exparte order without providing adequate opportunity of being heard to the assessee, therefore, considering additions/disallowance made by the Assessing Officer, Ld. AR of the assessee requested that the matter may be restored to the file of the Ld.CIT(A).

4. On the other hand, Ld.DR relied on the orders of the Authorities below.

5. Considered the rival submissions and material placed on record. On a perusal of the Ld.CIT(A) order, we observe that Assessing Officer completed the assessment by finding that the assessee has made bogus purchases and sustained 12.5% of the purchase value. Whereas Ld.CIT(A) did not accept the same and issued enhancement notice through ITBA Portal, we find that even though the Ld.CIT(A) provided opportunity through ITBA portal assessee could not appear before the Ld.CIT(A) and made proper submissions for the enhancement proposed by the Ld.CIT(A). Considering the totality of facts and circumstances of the case and keeping in view the additions/disallowance made by the Assessing Officer and enhancement proposed by Ld.CIT(A), in the interest of justice we are of the opinion that assessee should be given one more opportunity of being heard. Thus, this appeal is restored to the file of the Ld.CIT(A) for denovo adjudication in accordance with law. Assessee is directed to appear before the Ld.CIT(A) and shall cooperate with the appellate proceedings without taking unnecessary adjournments. Thus, this appeal is restored to the file of the Ld.CIT(A) accordingly.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 20th September, 2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER
Mumbai / Dated 20.09.2022
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