

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

BEFORE SHRI ABY T VARKEY, JM AND SHRI M BALAGANESH, AM

**ITA No. 2556/Mum/2022**

(Assessment Year 2009-10)

**ITA No. 2557/Mum/2022**

(Assessment Year 2010-11)

Babulal Pukhraj Sanghvi  
C/o. D.C. Bothra & Co. LLP (CA)  
(Formerly known as D.C. Bothra  
& CO.)  
297, Tardeo Road,  
Wille Mansion, 1<sup>st</sup> Floor,  
Opp. Bank of India, Nana Chowk,  
Mumbai-400 007

**(Appellant)**

The Income Tax officer  
Ward 19(1)(2)  
Room No.203, 2<sup>nd</sup> Floor,  
Matru Mandir, Tardeo Road,  
Mumbai-400 007

Vs.

**(Respondent)**

**PAN No. AACPS6204Q**

**Assessee by** : Shri Rajkumar Singh, AR  
**Revenue by** : Ms Saroj Wankar, DR

**Date of hearing:** 15.12.2022  
**Date of pronouncement :** 19.12.2022

**ORDER**

**PER BENCH:**

01. This appeal in ITA No.2556/Mum/2022 for A.Y. 2009-10 arise out of the order by the order passed by the National Faceless Appeal Centre, New Delhi (NFAC) [the learned CIT (A)] in DIN & Order No. ITBA/NFAC/S/250/2022-23/10044800362(1) dated 18<sup>th</sup> August, 2022, against the order of assessment passed under Section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter referred to as 'Act') dated 17<sup>th</sup> March, 2015, by the



learned Income Tax Officer, Ward 19(1)(2), Mumbai (hereinafter referred to as learned AO).

02. Identical issues are involved in both these appeals and hence, they are taken up together and disposed off by this common order for the sake of convenience.
03. The ground no.1 challenging the validity of reopening of assessment for the A.Y. 2009-10 was stated to be not pressed by the learned Authorised Representative at the time of hearing. The same is reckoned as a statement made from Bar and accordingly, ground no.1 raised for A.Y. 2009-10 is dismissed as not pressed.
04. The only identical issue involved in both these appeals is challenging the profit estimation made on account of ingenuine purchases.
05. We have heard the rival contentions and perused the materials available on record. The assessee is an individual and proprietor of Nandishwar Steel, engaged in the trading in ferrous and non-ferrous metals. It is not in dispute that assessee during the year had made certain purchases from certain parties, who were treated as tainted parties by the Sales Tax Department, Government of Maharashtra. In the opinion of the learned Assessing Officer, though assessee had furnished the relevant documents in the form of purchase invoices, bank statements evidencing payments by account payee cheques, stock registers, address of the suppliers, sales made out of purchases made from tainted parties, still the

assessee could not produce the proof of delivery of goods made by those tainted suppliers to the assessee. the learned Assessing Officer also proceeded to make independent enquiries by issuing notice under Section 133(6) of the Act on this suppliers which returned unserved with remarks by the postal authorities stating either 'left', 'not traceable', 'not known', etc. Accordingly, assessee was confronted with these developments and thereafter, directed to produce parties for personal examination by the learned Assessing Officer, which was not complied with by the assessee. Since, the sales made by the assessee was not disputed by the learned Assessing Officer, the learned Assessing Officer thought it fit to bring to tax only the profit element embedded in the value of disputed purchases. This profit percentage was estimated by the learned Assessing Officer for A.Y. 2009-10 at 15% and for A.Y. 2010-11 at 12.5%. On first appeal, the learned CIT (A) directed the learned Assessing Officer to estimate the profit percentage at 12.5% for both the years.

06. Since, in the instant case sales made out of disputed purchases were not doubted by the Revenue, the only logical conclusion could be that assessee had made purchases in the grey market in order to have savings in indirect taxes and instantly, profit element thereon. Hence, it would be just and fair to bring to tax only the profit element embedded in the value of such disputed purchases. We find that this Tribunal has been consistently



passing orders by estimating the profit percentage for assessee's engaged in iron and steel industry at 5%. When this was put to learned Authorized Representative, he also fairly agree for estimation of profit at 5%. Accordingly, we estimate the profit element at the rate of 5% of disputed purchases, which in our considered opinion, would meet the ends of justice. Accordingly, the ground no. 2 raised for A.Y. 2009-10 and ground no. 1 raised for A.Y. 2010-11 are partly allowed.

07. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the open court on 19.12.2022.

Sd/-  
(ABY T VARKEY)  
(JUDICIAL MEMBER)

Sd/-  
(M BALAGANESH)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 19.12.2022

*Sudip Sarkar, Sr.PS*

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai