

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

**SHRI AMIT SHUKLA, JM**

आयकरअपीलसं./ I.T.A. No. 1814/Mum/2022  
(निर्धारणवर्ष / Assessment Year: 2010-11)

<b>Mr. DARSHAN NAVALMAL SHAH.</b> 20/14, Joshi Bhavan, 2 <sup>nd</sup> Floor, 6 <sup>th</sup> Khetwadi Lani, Mumbai Maharashtra 400004	<b>बनाम/ Vs.</b>	<b>COMMISSIONER OF INCOME TAX (A) 30.</b> Aayakar Bhavan, Mumbai Maharashtra 400020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AZDPS7660Q		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri Prakash Jotwani & Ms. Rajni Ram
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Ms. Neeta Jeph
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	30.08.2022
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	28.11.2022

आदेश / O R D E R

**Per Amit Shukla, Judicial Member:**

The aforesaid appeal has been filed by the assessee against the impugned order dated 08.08.2019, passed by the Ld.CIT(A), Mumbai for the quantum of assessment passed by the u/s. 143(3), r.w.s 147 for the AY 2010-11.

2. In the grounds Appeal Assessee has challenged, the Assessee has raised following effectively grounds.

1. *The Ld. CIT(A) erred in dismissing the appeal of the appellant ex-parte.*
2. *The Ld. CIT(A) failed to appreciated that there was a reasonable cause for the appellant for not causing appearance on the dates fixed for hearing and as such disposal of appeal without granting fair, meaningful and proper opportunity is untenable.*
3. *The Ld. CIT(A) erred in enhancing the addition of Rs. 8,95,958/- being 12.5% made by the Assessing Officer to Rs. 71,67,666/-, being 100% on account of bogus purchase, while the appellant by letter dated 15.12.201 and 21.01.2019 had asked for withdrawal of the appeal, prior to the issue of enhancement notice.*
4. *The Ld.CIT(A) erred in confirming an addition of Rs. 71,67,666/- Towards bogus purchase, while the appellant had proved that the purchases were converted into sales and the sales were accepted by the Assessing Officer and CIT(A).*
5. *The Appellant craves leave to add alter or amend the ground of appeal at or before the hearing of the appellant.*

3. At the outset Appeal of the Assessee is time barred by 102 days. Before us, Ld. Counsel has filed affidavit of the Assessee wherein he has made following averments for condonation of delay, which are as under:-

*Mr. Darshan N. Shah, son of Mr. Novamal Shah Caged 39 years, having officer at 20/14 Joshi Bhavan, 2nd Floor, 6th Khetwadi Lani, Mumbai-400004. Do hereby I solemnly affirm and declare as under:*

*1. THAT I am the Proprietor of Nova Steel Corporation doing business of Reselling/Trading in Ferrous and Non-Ferrous metal and am fully conversant of the facts deposed below:*

*2. THAT I filed my return for A.Y 2010-11 declaring income of Rs 4,01,910/-.*

*3. THAT My CA had appeared before the A.O in assessment proceedings for A.Y 2010-11.*

*4. THAT in AY 2010-11 the A.O made additions towards bogus purchases and I preferred an appeal before the CIT (A) against the assessment order.*

*5. THAT when the appeal was listed for the hearing, my CA appeared and made the necessary compliances and submissions.*

*6. THAT Subsequently during the course of hearings, on the advice of my CA I had requested the CIT (A) to withdraw the appeal vide letters dated 15.12.2018 and 21.01.2019 and informed of the same to my CA.*

7. THAT I was in the bonafide belief that the appeal for the said assessment year was withdrawn by the CIT (A) as requested by me. Therefore, I did not verify on the portal about the status nor did my CA. I am not aware whether the order of the CIT (A) was served on me as I do not have any copy or original of the same.

8. THAT subsequently in 2022 I received penalty notices from A.O and replied vide letter dated 19.01.2022 to keep the same in abeyance as appeal was pending before CIT (A), as I was under bonafide belief that the same was pending.

9. THAT I was informed by A.O vide letter dated 02.02.2022 that appeal filed against order u/s 143 (3) was dismissed by CIT (A) by her order dated 08.08.2019 and income also was enhanced. This fact I was not aware and nor was my CA aware of it.

10. THAT by letter dated 22.02.2022, I requested the A.O to keep penalty proceedings in abeyance till the disposal of appeal by ITAT, which I proposed to file then.

11. THAT During the period from 08.08.2019 to 02.02.2022 I was under the impression that the appeal has been withdrawn as no order was received by me nor by my CA and thus the date of receipt of CIT (A) order should be construed as 02.02.2022, the day when I was informed by the A.O.

12. THAT in view of the above the appeal to ITAT had to be filed by 01.04.2022, since date of service is to be taken as 02.02.2022, the date when I was informed of the dismissal by CIT (A).

13. THAT on being made aware of the dismissal of the appeal, I had informed on 22.02.2022 to the AO in penalty proceeding stating that I am in the process of filing an appeal in ITAT against Quantum assessment and in the meanwhile I had started looking for professional help towards filing of the appeal in ITAT.

14. THAT I am now filing appeal to ITAT leading to delay of approx 101 days.

15. THAT the delay in filing this Quantum appeal in ITAT was not due to any wilful default on my part but due to unawareness of the appeal being disposed off and also delay in looking for professional help in filing appeal to ITAT. I request that I should get one more opportunity to be heard and explain merits of the case and no injustice to be caused to me in view of the delay.

I, Darshan N. Shah, the above-named deponent do hereby solemnly affirm and this affidavit from Para 1 to 15 are true and correct to the best of my knowledge and belief.

4. After hearing both the parties and on perusal of the record, I find that, before the Ld.CIT(A), Assessee wanted to withdraw the Appeal which was informed to the Ld.CIT(A), by various letters, however, the Ld.CIT(A) the Assessee could not received the order of the Ld.CIT(A), as stated in para 7 of the affidavit. Looking to the aforesaid facts & circumstances I am condoning the delay and admit the same in the interest of substantial justice.

5. The briefs facts are that, Assessee is involved in ferrous and nonferrous metal and general suppliers. The Assessee had made purchasers from certain parties for sums aggregating to Rs. 71,67,666/-, which according to the Assessing Officer were made from the parties who were found to be involved providing an accommodation entries found by the Sales Tax Department Maharashtra. The list of such parties has been given at page 2 of the Assessment order. Based on the information, the Assessee's case was re-opened u/s. 147 and notice was issued u/s. 148 on 21.02.2015. The Ld. Assessing Officer based on the information alone held that the purchasers were not genuine and therefore, he held that Assessee books of account are not correct and complete and accordingly, he rejected the same u/s. 145(3), and applied gross profit (GP) rate on the said purchases at the rate of 12.5% and added Rs. 8,95,958/-.

6. The Ld. CIT (A), issued enhancement notice to add the entire purchases. The Assessee thereafter, sought permission to withdraw the Appeal which was denied.

7. The Ld.CIT(A) disallowed the entire purchases on the ground that, Assessee could not produce vital documents such as, delivery challan, transport receipts of goods, in-ward register maintained of godown etc. and Assessee could not prove that goods were actually delivered. Thereafter, she has referred to certain decisions and made 100% addition of the entire purchases of Rs. 70,67,666/-.

8. After hearing both the parties and on perusal of the material placed on record, I find that, the Assessee before the Assessing Officer had field entire details of purchase invoices and the payment were made through banking channel and also provided entire summary of purchase and corresponding sales. Before me, the Ld. Counsel drew contention to pages 132-136, which gives the details of disputed purchases along with corresponding sales and the quantitative details. He submitted that once the source of purchases are from the books and there is no dispute with regard to the quantity; and sales have been accepted of the same quantity of purchases, then it cannot be held that purchases are non genuine, so as to warrant addition of entire purchases. The copy of purchases corresponding sales bills have also been placed in the

paper book. Accordingly, no addition should have been made. On the other hand, Ld. DR relied upon the order of the Ld.CIT (A).

9. From the perusal of the details of purchases and from the perusal of the material on record, I find that, in the trading account the Assessee had shown the following purchases and sales:

PARTICULARS	AMOUNT	PARTICULARS	AMOUNT
To, Opening Stock	236,560	By, Sales	20,475,453
To, Purchase	19,500,886	By, Closing Stock	637,500
To, Transport expenses	25,933		
To, Gross Profit c/f	1,349,574		
Total Rs.	21,112,953	Total Rs.	21,112,953

10. Apart from that, Assessee had filed entire purchase bills and the source of the entire purchases have been shown from the books of account and payment has been made through banking channel which facts is not disputed. Another important fact here is that, no where the quantity of purchase or the quantity and value of the sale has been disputed by the Assessing Officer or by the Ld. CIT (A). Once in the trading account quantity of purchase and sales has been accepted, I do not find any reason to treat the entire

purchases as non genuine. Simply because certain documents for delivery of goods here in this case have not been filed, then also it cannot be inferred that the Assessee has not made any purchases or has booked such huge amount of purchases without actual delivery because without the purchases Assessee could not have recorded the sales which stands accepted. Before us, the Ld. Counsel has given entire details of disputed purchase along with the corresponding sales with the quantity, bill Nos. From the perusal of the same, it is seen that Assessee immediately after the purchases has made the sales either on the same day or next day or within 2 days of the same quantity. Without actual purchases the same quantity of sale could not have been made. Accordingly, enhancement Ld. CIT (A), does not have any basis if this are facts and the records.

11. Now, coming to the issue of gross profit. I find that already Assessee had shown gross profit rate of 6% on the entire sale which included the sale of the same very items of purchases and quantity and value of sale, therefore, I hold that, gross profit rate cannot be applied on such purchases when more than 70% of purchases have

accepted with the same gross profit rate. Accordingly, entire addition made by the Assessing Officer and enhancement Ld. CIT (A) is **deleted**.

**12. In the result, the appeal filed by the assessee is allowed.**

*Orders pronounced in the open court on 28<sup>th</sup> November, 2022.*

*Sd/-*  
**(Amit Shukla)**  
**Judicial Member**

मुंबई Mumbai;दिनांक Dated : 28.11.2022

*Mrs. Urmila*

**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**