

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.3813/Mum/2018 & 3814/Mum/2018
(Assessment Year :2009-10 & 2010-11)**

Smt. Ginni Prateek Gupta 6 th New Harileela House Mint Road Fort, Mumbai – 400 001	Vs.	Dy. Commissioner of Income Tax CC-4(2) Mumbai Air India Building 19 th Floor, Room No.1918 Nariman Point, Mumbai-21
PAN/GIR No. AFXPK2448E		
(Appellant)	..	(Respondent)

**ITA No.3798/Mum/2018
(Assessment Year :2009-10)**

Dy. Commissioner of Income Tax CC-4(2) Mumbai Air India Building 19 th Floor, Room No.1918 Nariman Point, Mumbai- 21	Vs.	Smt. Ginni Prateek Gupta 6 th New Harileela House Mint Road Fort, Mumbai – 400 001
PAN/GIR No. AFXPK2448E		
(Appellant)	..	(Respondent)

Assessee by	Shri Bhupendra Karkhanis & Shri Vijay Bhatt & Shri Aakash Marthak
Revenue by	Shri H.K. Lal
Date of Hearing	05/01/2023
Date of Pronouncement	09/01/2023

आदेश / ORDER**PER BENCH:**

These cross appeals in ITA Nos. 3813/Mum/2018 & 3798/Mum/2018 for A.Y.2009-10 and appeal in ITA No. 3814/Mum/2018 for A.Y 2010-11 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-52, Mumbai in appeal No.CIT(A)-52/DC CC-4(2)/IT-525/16-17 & CIT(A)-52/DC CC-4(2)/IT-707/16-17 dated 21/03/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 153A of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/10/2016 by the Id. Dy. Commissioner of Income Tax, Central Circle – 4(2), Mumbai (hereinafter referred to as Id. AO).

Identical issues are involved in all these appeals and hence, they are taken up together and disposed of by this common order for the sake of convenience.

2. The ground No.1 raised by the assessee for A.Yr. 2009-10 and 2010-11 was stated to be not pressed by the Id. AR at the time of hearing. The same is reckoned as a statement made from the Bar and accordingly, the ground No.1 for A.Y. 2009-10 and 2010-11 is hereby dismissed as not pressed.

3. The only identical issue to be decided in these appeals is as to whether the Id. CIT(A) was justified in restricting the addition to the extent of profit percentage embedded in the value of disputed purchases @12.5% in the facts and circumstances of the instant case.

3.1. We have heard rival submissions and perused the materials available on record. Both the parties mutually agreed that the facts of A.Y.2009-10 be taken up for adjudication and the decision rendered thereon, shall apply with equal force for A.Y.2010-11 also except with variance in figures.

3.2. We find that assessee is a proprietor of M/s. G.G. Corporation which is related concern of Ushdev group and is engaged in the business of trading in ferrous and non-ferrous metals. A search and seizure action u/s.132 of the Act was carried out on Ushdev group on 11/09/2014. During the course of search proceedings, evidences found thereon proved that assessee and its various group concerns had taken certain accommodation entries from various concerns. During the A.Y.2009-10, the assessee made purchases from M/s S.B. Metal Corporation to the tune of Rs.2,00,24,845/- and M/s. Sai International Impex to the tune of Rs.2,54,70,515/-. These parties were treated as tainted dealers as per the website of Sales Tax department of Government of Maharashtra. The assessee furnished the following documents before the Id. AO to prove the genuineness of the purchases:-

- (a) Ledger extracts of the suppliers as appearing in the books of the assessee company.
- (b) Quantitative details of purchases made from above parties and corresponding sales along with sample copies of bills of respective parties.
- (c) Overall yearly quantitative details showing purchases as well as sales.
- (d) Proof of corresponding sales made from those disputed purchases.
- (e) Details from bank to prove that entire payments are made by account payee cheques to those parties.

(f) Sample copies of bills of respective parties.

3.3. The Id. AO however, disregarded the aforesaid documents and concluded that assessee had failed to establish the fact of movement and delivery of goods and relevant details of transportation and delivery challans were not furnished and accordingly, proceeded to treat the entire value of disputed purchases of Rs.4,54,95,360/- as unverifiable purchases and disallowed the same in the assessment.

3.4. The Id. CIT(A) observed that since the corresponding sales made out of disputed purchases were not disputed by the Id. AO, only profit element embedded in the value of such purchases could be brought to tax. This profit element was estimated by the Id. CIT(A) at 12.5%. Aggrieved, both assessee as well as the Revenue are in appeal before us for A.Y.2009-10 and only assessee is in appeal before us for A.Y.2010-11.

3.5. At the outset, there is no dispute that assessee had made purchases from certain tainted parties. The main contention of the assessee as well as the Id. CIT(A) is that since the corresponding sales made out of the said disputed purchases were not doubted by the Ld. AO, the only profit element embedded in the value of such disputed purchases could be brought to tax. Now the dispute before us is determination of such profit element. The Id. CIT(A) had estimated the said profit percentage at 12.5% of value of disputed purchases. We find that the Id. AR had placed on record the copy of the decision of this Tribunal in the case of Shri Prateek Gupta vs. DCIT and DCIT vs. Prateek Gupta in ITA Nos. 3861, 3862, 3793 and 3792/Mum/2018 for A.Yrs. 2008-09 and 2010-11 respectively dated 11/09/2019. The Id. AR also stated that Shri Prateek Gupta is a relative of the assessee. In the said order, this Tribunal under similar facts and circumstances, by considering the profit percentage

earned by the assessee on disputed purchases as well as the overall purchases, had estimated the profit percentage to 2% of value of disputed purchases. The Id. AR before us also placed on record the statement showing gross profit earned by the assessee in percentage terms both on disputed purchases and overall purchases for the A.Y. 2009-10 and 2010-11. As the factual matrix is exactly identical with the facts prevailing in the case of Shri Prateek Gupta which has been adjudicated by this Tribunal in the order dated 11/09/2019 referred to supra and respectfully following the same, we direct the Id. AO to estimate the profit percentage at 2% of value of disputed purchases. Accordingly, the grounds raised by the assessee as well as by the Revenue are disposed of in the above mentioned manner.

4. In the result, appeals of the Assessee for A.Y.2009-10 and 2010-11 are partly allowed and appeal of the Revenue for A.Y.2009-10 is partly allowed.

Order pronounced on 09/01/2023 by way of proper mentioning in the notice board.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 09/ 01/2023
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,

(Asstt. Registrar)
ITAT, Mumbai