

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

**BEFORE SHRI ABY T. VARKEY, JM**

आयकर अपील सं/ I.T.A. No.38/Mum/2023  
(निर्धारण वर्ष / Assessment Year: 2009-10)

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|--|---------------------|------------------------------|
| Mukesh Vinodkumar Singh<br>Gala No. 5 Saisneha<br>Industrial Estate Near<br>Ekvira Gas Godown<br>Bhayander (E), Mumbai-<br>401105. | <b>बनाम/</b><br>Vs. | ITO-2(5), Thane<br>CIT/NFAC. |
| <b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BMPPS6780N</b>   |                     |                              |
| (अपीलार्थी /Appellant)   | ..                  | (प्रत्यर्थी / Respondent)    |

|              |                                |
|--------------|--------------------------------|
| Assessee by: | Shri D. C. Saboo & Shyam Saboo |
| Revenue by:  | Shri Anil Gupta                |

सुनवाई की तारीख / Date of Hearing: 02/03/2023  
घोषणा की तारीख /Date of Pronouncement: 25/05/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 29.11.2022 for AY. 2009-10.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the action of the AO by making addition of 100% alleged bogus purchases while accepting the sales shown by the assessee.

3. Brief facts as noted by the AO is that the assessee had filed ROI declaring total income at Rs.3,99,174/- on 29.09.2009 for AY. 2009-10 which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter "the Act"). Later, the AO received an information from the Maharashtra Sales Tax Department, Mumbai that certain persons were providing accommodation entries/bills to facilitate beneficiaries like assessee to book bogus purchases in the books without actual



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purchases/delivery of goods. Based on the information, the assessee's assessment for AY. 2009-10 was reopened u/s 147 of the Act; and the AO notes that the assessee had shown to have made purchases of goods from two such operators (i) M/s Om Corporation to the tune of Rs.3,78,658/- and (ii) M/s Rumeet Enterprises to the tune of Rs.4,31,288/- (total amount of Rs.8,09,946/-). When confronted by AO regarding this adverse information about the purchases from these parties, the assessee produced the following documents to substantiate the purchases and also the corresponding sales which is noted as under: -

- (i) Copies of bank statements for F.Y. 2008-09
- (ii) Copies of bills raised by the above parties along with copies of ledger extracts as appearing in your books of accounts for F.Y. 2008-09.
- (iii) Transport/Lorry receipts, Octroi paid receipts
- (iv) Receipts of goods received in your office, godown and iste office or at factory site.
- (v) stock register maintained by you for FY 2008-09.
- (vi) Invoice, Challans, etc. and all other supporting documents or evidences available with you.
- (vii) Copy of VAT audit and sales tax return for the relevant year.

**4.** However, the AO didn't accept the explanation given by assessee because according to AO, the notices issued u/s 133(6) of the Act to the aforesaid two parties were returned back as unserved by the postal authorities with a remark 'Address left'. Therefore, according to the AO, the assessee failed to prove the genuineness of the purchase



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shown from these two parties. Therefore, he added the entire amount (Rs. 8,09,946/-) as non-genuine purchases and added the same to the income of the assessee. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the same. Aggrieved, the assessee is before this Tribunal.

**5.** I have heard both the parties and perused the records. Based on information from the Maharashtra Sales Tax Department, the assessee's case was reopened. The adverse information was that the assessee had indulged in accepting accommodation entry by showing bogus purchase from two parties (i) M/s. Om Corporation to the tune of Rs. 3,78,658/- and (ii) M/s. Rumeet Enterprises to the tune of Rs.4,31,288/- i.e. total amount of Rs.8,09,946/-. Even though the assessee filed the relevant documents (supra) to prove the genuineness of the transaction as well as the corresponding sales (page 19 of PB) which shows that the assessee has shown margin of 25% from the sales; and that the assessee has shown gross profit of 12.84%, the AO based on the adverse information received from the Sales Tax Department as well as fact that notice u/s 133(6) of the Act could not be served upon these parties, has added the entire amount of Rs.8,09,946/- to the total income of the assessee. According to the Ld. AR, the action of the AO/Ld. CIT(A) is untenable because both the authorities have accepted the sales of the very same goods from both these parties. On being confronted, the Ld. DR could not controvert this crucial fact. It is common knowledge that without purchases, there cannot be any sales. So the action of AO to have made the 100%



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addition of entire purchase of Rs. 8,09,946/- cannot be sustained because the presumption is that even if assessee obtained bogus bills, the assessee is presumed to have obtained the goods from grey market. Therefore, profit embedded in such sales need only be added instead of adding the entire purchases. It is noted that the assessee is dealing with business of trading in Galvanise Wires which shows gross profit rate of 12.5% which is reasonable. And therefore the impugned order of the Ld. CIT(A) is set aside and the addition made by the AO of 100% is restricted at the rate of 12.5% of Rs.8,09,946/-.

6. In the result, the appeal of the assessee is partly allowed.  
Order pronounced in the open court on this 25/05/2023.

Sd/-  
(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 25/05/2023.  
Vijay Pal Singh, (Sr. PS)

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,  
सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai