

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

**BEFORE: SHRI NARENDER KUMAR CHOUDHRY,
JUDICIAL MEMBER**

**ITA No.1657/Mum/2023
(Assessment Year :2009-10)**

Shri Ketan Jaysukhlal Shah P/2, D.L. Jain Colony 64, Dr. Ambedkar Road Chinchpokli Mumbai-400 012	Vs.	ITO Ward 20(2)(3) 210, Piramal Chambers Lalbaug, Parel Mumbai-400 012
PAN/GIR No.AAGPS0969J		
(Appellant)	..	(Respondent)

Assessee by	Shri Devendra Jain
Revenue by	Shri Anurag Tripathi
Date of Hearing	31/08/2023
Date of Pronouncement	31/08/2023

आदेश / ORDER

PER NARENDER KUMAR CHOUDHRY

This appeal has been preferred by the assessee against the order dated 17/03/2023 impugned herein passed by the Ld. Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC) (in short 'Ld. Commissioner') u/s.250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y.2009-10.

2. In the instant case, the case of the assessee was reopened u/s.147/148 of the Act on the basis of information received from the Sales Tax Department with regard to the alleged bogus purchases to the tune of Rs.1,07,91,783/- made by the Assessee from four parties i.e. Shiv Industries, Maruti Steel Traders, Forum Steels and Jai Krishna Enterprises. In order to verify the genuineness of the transactions, the assessee was asked to substantiate by producing relevant details and documents which the Assessee failed to produce therefore, the books of account of the assessee were rejected u/s.145(3) of the Act and ultimately an amount of Rs.13,48,973/- being 12.5% of the alleged bogus purchases of Rs.1,07,91,783/- has been made and added the same in the income of the Assessee, which stands affirmed by the Id. Commissioner by the impugned order, against which the Assessee is in appeal and mainly claimed that the Tribunal in various decisions considered the identical issues/circumstances and applied the profit margin embedded in the bogus purchases from 2% to 5% invariably. I observe that the Assessee is dealing in Iron and Steel and during the argument the Assessee relied upon various judgments, somehow in my considered view, judgment in the case of Dinesh H Trivedi Vs ITO- 18(1)(4) {ITA No.4523/Mum/2018 decided on 05/02/2020}, wherein the profit was estimated at 12.5% by authorities below, however, the Hon'ble Bench restricted the same to 5% of the alleged bogus purchases and therefore is more peculiar and similar to the facts and issues involved in the instant case, hence for just and proper decision of the case and for the ends of justice and litigation, I am inclined to direct the Assessing Officer to apply 5% of the alleged bogus purchases of Rs. 1,07,91,783/- as profit earned and add the same in the income of the Assessee, hence, directed accordingly.

3. In the result, appeal filed by the assessee is partly allowed.

Order pronounced on 31st August, 2023.

Sd/-
(N K Choudhry)
JUDICIAL MEMBER

Mumbai;
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai