

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

**BEFORE SHRI ABY T VARKEY, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No. 3507 & 3752/Mum/2023  
(Assessment Year: 2010-11)**

<b>Vijaykumar Mansukhlal Mehta</b> 156, Cooper Compound, T.P. Street, Kumbhar Wada, 6 <sup>th</sup> Lane, Mumbai – 400 004 <b>PAN : AGAPM3179N</b>	Vs.	<b>Income Tax Officer- 19(3)(5)</b> Piramal Chamber, Mumbai – 400 012
<b>(Appellant)</b>	:	<b>Respondent)</b>

<b>Income Tax Officer- 19(3)(5)</b> Piramal Chamber, Mumbai – 400 012	Vs.	<b>Vijaykumar Mansukhlal Mehta</b> 156, Cooper Compound, T.P. Street, Kumbhar Wada, 6 <sup>th</sup> Lane, Mumbai – 400 004 <b>PAN : AGAPM3179N</b>
<b>(Appellant)</b>	:	<b>Respondent)</b>

**Appellant/Assessee by** : Shri Vimal Punmiya  
**Revenue/Respondent by** : Dr. Yogendra T. Wakare

**Date of Hearing** : 21.02.2024  
**Date of Pronouncement** : 23.02.2024

**ORDER**

**Per Bench:**

1. These appeals of the Revenue and the Assessee are against the order of Commissioner of Income Tax (Appeals) / NFAC [for short 'the CIT(A)], dated 21.8.2023 for AY 2010-11.

2. The only issue contended by both the Revenue and the Assessee are the profit estimated by the AO at 12.5% which was reduced to 6.5% by the CIT(A) on the alleged bogus purchases made by the Assessee.

3. The Assessee is an individual engaged in the business of trading in ferrous and non-ferrous metals. The Assessee filed the return of income for AY 2010-11 on 15.10.2010 declaring income of Rs.4,38,129/-. The Assessing Officer (the AO) re-opened the assessment based on information of sales tax department received through DGIT (Inv), Mumbai that the Assessee was involved in certain non-genuine purchases since the list of beneficiaries who have taken non-genuine purchases include the Assessee's name. The AO completed the assessment by making an addition of Rs.29,53,173/- estimating the profit of 12.5% of the alleged non-genuine purchases of Rs.2,36,25,375/-. Aggrieved, the Assessee filed further appeal before the CIT(A), who gave partial relief to the Assessee by reducing the profit percentage to 6.5% on the alleged non-genuine purchases where by the addition was reduced to Rs.15,35,649/-. Both the Assessee and the Revenue are in appeal against the order of the CIT(A).

4. The learned Authorised Representative (the Ld. AR) submitted that the Assessee has furnished the relevant details with regard to the alleged bogus purchases such as bills, etc., and that these transactions are made through banking channels. The Ld. AR further submitted that the sales figure of the Assessee is not disputed by the AO and that the AO failed to appreciate that the accounts of the Assessee are duly audited. The Ld. AR also submitted that the impugned purchases are included in the VAT returns and that the Assessee has paid VAT at applicable percentage on the impugned purchases. The Ld. AR argued that other than the information from the Investigation Wing, the Revenue did not contain any

material incriminating the Assessee and that the revenue has found anything adverse with regard to the details submitted by the assessee. Therefore, the Ld. AR submitted that the addition made merely based on information from investigation wind is not sustainable. The ld AR made an alternate plea wherein he brought to our attention that the Hon'ble Bombay High Court in the case of Principal CIT vs Mohammed Haji Adam & Co in Income Tax Appeal No.1004 of 2016 dated 11/02/2019 while considering a similar issue has held that the additions should be limited to the extent of the G.P. rate on purchases at the same rate of other genuine purchases. The Ld. AR submitted a table containing the profit percentage on genuine purchases and profit percentage on alleged bogus purchases to submit that since the profit percentage on alleged bogus purchase is more than the genuine purchase, applying the ratio of the Hon'ble High Court in the above decision, the entire addition should be deleted.

5. The learned Departmental Representative (the Ld. DR) on the other hand submitted that as per the findings of the sales tax department, the party from whom the Assessee has made purchases are entry providers and therefore the lower authorities have correctly held the purchases to be bogus. The Ld. DR further argued that when the purchases are clearly held to be non-genuine, the CIT(A) is not correcting reducing the profit percentage from 12.5% to 6.5% without any basis by merely relying on decision in Assessee's own case for AY 2009-10.

6. We heard the parties and perused the material on records. The only dispute in this case is with regard to the profit percentage to be applied on the alleged bogus purchases for the purpose of taxation. We notice that the Hon'ble Bombay High Court in the case of Principal CIT vs Mohammed Haji Adam & Co (supra) has considered the similar issue and held that:-

*“8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases”.*

7. Going by the ratio of above judgment of the Hon'ble High Court, we see merit in the contention that gross profit ratio in the alleged non genuine purchases should be restricted to the extent of same rate of other genuine purchases accordingly we are of the view that the ratio of above decision is applicable in Assessee's case also. However the contention of the Assessee that no addition should be made as per the GP ratio of genuine and alleged bogus purchases needs factual verification. Therefore, we remit the issue back to the AO with a direction to examine the submissions of the Assessee with regard to the profit percentage on alleged bogus purchases and genuine purchases and decide keeping in mind the ratio of the above decision. Assessee is directed to submit the relevant details in connection with the contention as may be called for by the AO. It is ordered accordingly.

8. In the result the appeal of the Assessee and the Revenue are allowed for statistical purposes.

*Order pronounced in the open court on 23-02-2024.*

**Sd/-**  
**(ABY T VARKEY)**  
**Judicial Member**

**Sd/-**  
**(MS. PADMAVATHY S)**  
**Accountant Member**

Mumbai, Dated : 23.02.2024

*Mini Pawar, Sr. PS*

**Copy of the Order forwarded to :**

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

**BY ORDER,**  
**(Dy./Asstt. Registrar)**  
**ITAT, Mumbai**