

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2864/Mum/2023  
(Assessment Year :2009-10)**

Income Tax Officer, Ward 3(2) Kalyan West- 421 301 Maharashtra	Vs.	Rajesh Amulakhrai Sanghvi 806, Suparshav Apartments CSP Co-op Housing Society, Nehru Road Sarvoday Nagar Mulund (W) Mumbai - 400 080
<b>PAN/GIR No.AANPS8833J</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Ms.Ruchi Rathod
Revenue by	Shri R.R. Makwana
<b>Date of Hearing</b>	<b>20/03/2024</b>
<b>Date of Pronouncement</b>	<b>20/03/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the Revenue against order dated 15/06/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) r.w.s. 147 for the A.Y.2009-10.

2. In the grounds of appeal, the Revenue has challenged the action of the ld. CIT(A) in restricting the disallowance to 12.5% of the purchases instead of addition made by the ld. AO for the entire purchases of Rs.15,77,629/-.

3. The facts in brief are that assessee had filed his return of income on 29/09/2009 declaring total income of Rs.4,72,510/- and the said return was processed u/s.143(1). Subsequently, based on information from DGIT (Inv.) that the Sales Tax Department, Mumbai has unearthed a racket involving various auditors involved in issuing purchases. Based on this information, the assessee's case has been reopened u/.147. The assessee had shown purchases for a sums aggregating to Rs. 15,77,629/- from two parties. The ld. AO has made the addition on the ground that notice u/s. 133(6) sent to one party, M/s. J.B. Interlink has not been served and for other party M/s. Jindal Steel Corporation, it was found that no such business was carried out as per the report of the Inspector. Accordingly, he added the entire amount of Rs.15,77,629/- u/s.69C.

4. The ld. CIT (A) has restricted the addition while estimating the GP rate of 12.5% on the total bogus purchases from two parties.

5. After hearing both the parties and on perusal of the impugned order, we find that AO has made addition on account of entire purchases which is wholly unjustified, because once the source of purchases have been debited in the books of accounts and corresponding quantity of material purchased had been recorded in the books and corresponding quantity of sales has

also been accepted then, it cannot be held that purchases are outside books.

6. At the most, it could be the case of purchases made from hawala dealers for inflating the cost and suppressing GP rate. If parties have not confirmed the transaction then in such a case the principle laid down by the Hon'ble Bombay High Court in the case of **PCIT vs. Vishwashakti construction 15 & 20 ITXA 1016 & 1026 of 2018**, wherein GP rate of 12.5% has been held to be reasonable in such cases, is applied in the present case also, then CIT (A) is justified. Accordingly, the grounds raised by Revenue is dismissed.

**7. In the result, appeal of the Revenue is dismissed.**

Order pronounced on 20<sup>th</sup> March, 2024.

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 20/03/2024  
KARUNA, *sr.ps*

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**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**