

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

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

**ITA No.3049/Mum/2023
(Assessment Year :2011-12)**

ITO Ward 3(2) Kalyan 2 nd Floor Rani Mansion Murbad Road Kalyan- 421 301	Vs.	Laxman Madhabhai Bhut Prop. M/s. Sai Enterprises Anju View CHS Plot No.45, Gandhi Nagar, Manpada Road Dombivali East Maharashtra - 431 201
PAN/GIR No.AMBPB4770D		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri R.R. Makwana
Date of Hearing	21/03/2024
Date of Pronouncement	21/03/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against order dated 19/06/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) for the A.Y.2011-12.

2. In the grounds of appeal, the Revenue has challenged the action of the Id. CIT(A) in restricting the disallowance to 12.5% of the purchases instead of addition made by the Id. AO for the entire purchases of Rs.20,81,724/-.

3. None appeared on behalf of the assessee.

4. The facts in brief are that assessee had filed his return of income on 29/09/2011 declaring total income of Rs.2,82,640/- 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. 20,81,724/- from various parties. The Id. AO has made the addition on the ground that notice u/s. 133(6) sent to various parties and it was returned unserved. Accordingly, he added the entire amount of Rs.20,81,724/- u/s.69C.

5. The Id. CIT (A) has restricted the addition while estimating the GP rate of 12.5% on the total bogus purchases from various parties.

6. After hearing the Id. DR 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.

7. 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 ground raised by Revenue is dismissed.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced on 21st March, 2024.

Sd/-

**(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Mumbai; Dated 21/03/2024
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