

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

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

**ITA No.3010/Mum/2023
(Assessment Year :2010-11)**

ITO-19(2)(2) Mumbai	Vs.	Modilal Mulchan Jain HUF 2 nd Floor, R. No.17 Kanbai Bhuvan Khadilkar Road C.P. Tank Mumbai - 400 004
PAN/GIR No.AAAHM1010N		
(Appellant)	..	(Respondent)

Assessee by	Shri Kiron M Mallapur
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 28/06/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) for the A.Y.2010-11.

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.14,90,401/-.

3. None appeared on behalf of the assessee.

4. The facts in brief are that assessee had filed his return of income on 13/10/2010 declaring total income of Rs.6,96,151/- 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. 14,90,401/- from various parties. The ld. AO has made the addition on the ground that notice u/s. 133(6) sent to various parties and it was returned back by the postal authorities with the remarks 'Not Known'. Accordingly, he added the entire amount of Rs. 14,90,401/- u/s.69C.

5. The ld. 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 ld. 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

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 21/03/2024
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