

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,**

ITA No.3554/Mum/2023 (A.Y 2011-12)

Dinesh Somatmal Dhokar Room No. 6, Bldg. No. 1 Vaibhav C. Wing, Dedarkar Compound, Tardeo Road Mumbai 400034	Vs.	Income Tax Officer – 19(1)(1) Piramal Chambers Lalbaug, Parel, Mumbai
PAN/GIR No. :AAAPD8605N		
Appellant	..	Respondent

Appellant by :	Ms. Ridhisha Jain
Respondent by :	Shri Krishna Kumar, JCIT

Date of Hearing	08.05.2024
Date of Pronouncement	13.05.2024

आदेश / O R D E R

PER AMARJIT SINGH, AM:

This appeal filed by the assessee is directed against the order passed by the CIT(A), which in turn arises from the assessment order passed by the A.O u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act), dated 02.12.2016 for A.Y. 2010-11. The assessee has assailed the impugned order on the following grounds before us:

- “1. On the facts and in the circumstances of the case and in law, the Hon’ble CIT(A) erred n upholding the addition made by the Ld. AO on account of bogus purchases @ 12.5% without appreciating the fact that Hon’ble ITAT in assessee’s own case for the AY 2009-10 has estimated the alleged bogus purchases @ 5%.”*

2. The facts in brief are that return of income declaring total income of Rs.9,47,966/- was filed on 19.09.2011. The same was processed us 132(1) of the Act. There after information was received from DIGT (Inv), Mumbai that as per the communication received from Sales Tax Department the assessee has availed accommodation entries of purchases without supply of any goods from two parties as under: -

Hawala Name	PAN	F.Y.	Amount in Rs.
Shankeshwar Sales Corporation	AAAPC4405F	2010-11	9,168,359
Prakesh Steel & Allies	AACPD5521F	2010-11	9,764,385
		Total	1,89,32,744

3. Therefore, the case of the assessee was reopened by issue of notice u/s. 148 of the act on 27.01.2016. During the course of assessment the assessee was asked to produce certain details relating to the purchases, i.e., name of the seller, bill and vouchers, quantity, mode of transportation, etc. After perusing the details submitted by the assessee the AO observed that no actual goods were supplied by the aforesaid parties and the assessee could not file the documents, i.e. delivery challan, transportation receipt, goods inward register maintained at the godown, etc. The AO also stated that the assessee also has not produced the said parties from whom such purchases claimed to have been made for examination. Therefore the AO was of the view that the purchases made by the assessee from the aforesaid two parties were not genuine. Further, the AO stated that the intention of indulging in such activity was to suppress the true profit and to reduce tax liability. Therefore, he added 12.5% of the total un-genuine purchase of Rs.1,89,32,744 to tax as profit element embedded in such purchases.

4. Aggrieved, assessee appealed before the CIT(A). The ld. CIT(A) dismissed the appeal filed by the assessee.

5. During the course of assessment proceedings before us, the ld. CIT(A) submitted that on similar issue of identical facts in assessee's own case the ITAT Mumbai for AY 2010-11 vide ITA No., 4546/Mum/2019 dated 25.01.2021 directed the AO to tax the margin @5% less margin already offered in respect of allege bogus purchase in the return of income. The ld. counsel for the assessee has also referred to the decision of the ITAT for AY 2009-10 in assessee's own case by the ITAT Mumbai dated 26.10.2021 restricting the addition to 5% of the alleged bogus purchase. The ld. counsel for the assessee also submitted that the decision of the ld. CIT(A) in sustaining the addition @12.5% in the case of the assessee who is engaged in the business of reselling of ferrous and non-ferrous metal is not justified.

6. On the other hand, the ld. D.R. supported the orders of the lower authorities.

7. Heard both the sides and perused the material on record. The case of the assessee was reopened on the basis of information received from DIGT (Inv), Mumbai that that the assessee has obtained accommodation entries from two parties as per the information received from the Sales Tax Department. Without reiterating the facts as discussed above, the AO has added the extra profit embedded in the unproved purchases at 12.5% of such purchases to the total income of the assessee. We find that the ITAT Mumbai in assessee's own case for AY 2010-11 has directed the AO to tax the profit margin at 5% less the profit margin already offered in respect of the alleged bogus purchases in the return. Further, we find that the ITAT Mumbai in assessee's own

case in AY 2009-10 vide order dated 25.10.2021 has restricted the addition to 5% of the alleged bogus purchases. The case of the assessee for AY 2009-10 was adjudicated on 25.10.2021, therefore, following the latest decision of the ITAT for AY 2009-10 adjudicated on 25.10.2021, we direct the AO to restrict the addition to the extent of 5% of the alleged bogus purchases.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 13.05.2024

Sd/-
(VIKAS AWASTHY)
Judicial Member

Sd/-
(AMARJIT SINGH)
Accountant Member

Place: Mumbai
Date: 13.05.2024
n.p

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण DR, ITAT,
Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण/ ITAT, Bench,
Mumbai.

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	09.05.2024		Sr. PS/PS
2	Draft placed before author	10.05.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement			Sr. PS/PS
7	File sent to Bench Clerk			Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			