

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL  
MEMBER**

**&**

**SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 4590/Mum/2023  
(A.Y. 2010-11)**

**ITA No. 4591/Mum/2023  
(A.Y. 2011-12)**

Dinesh Tarachand Mehta 25, Ashukunj Building, 3 <sup>rd</sup> Floor, 2 <sup>nd</sup> Parsiwada, Mumbai-400004	Vs.	ITO-19(1)(4), Matru Mandir Building, Tardeo Road, Grant Road, Mumbai-400007
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AMJPS3437N</b>		
<b>Appellant</b>	<b>..</b>	<b>Respondent</b>

Appellant by :	Mr. Nikhil Joshi
Respondent by :	Shri Nagnath Pasale

Date of Hearing	30.05.2024
Date of Pronouncement	24.07.2024

**आदेश / O R D E R**

**PER RENU JAUHRI [A.M.] :-**

These appeals are filed by the assessee against the consolidated order of the Learned Commissioner of Income-tax (Appeals), Mumbai-30 /National faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 25.06.2018 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Years [A.Y.] 2010-11 & 2011-12.



2. Appeals have been filed with delay of 1939 days. The assessee has filed application for condonation of delay and has submitted that the order of the Ld. CIT(A) dated 07.09.2018 which was sent online was not in his knowledge. The earlier CA, Shri Navratnamal Ji Surana who was looking after the matter was diagnosed with Covid and hospitalized. Thereafter, he continuously suffered from ill health and unfortunately expired on 17.03.2023. Even though the fees for filing appeal of Rs. 10,000/- was deposited on 07.03.2020 but the CA could not file appeal due to his ill health. The new CA appointed by the assessee while verifying the outstanding tax demand noticed that the appellate order has been passed and no further appeal had been filed. It is the only then the assessee came to know that the appeal had not been filed despite the fact that appeal fee of 10,000/- was paid on 07.03.2020 i.e. a fortnight before the onset of Covid. The assessee has furnished proof of deposit of Rs. 10,000/- as fee for appeal and also message received regarding condolence meeting of Shri Navratnamal Ji Surana CA in support of his contentions.

3. In view of the facts submitted by the Ld. AR, we hereby condone the delay in filing of appeals and proceed to decide issues involved on merits.

4. The only issue which is common in both years is regarding the disallowance of purchases to the extent of 12.05% on account of purchase from non-genuine parties.

**ITA No. 4590/Mum/2023 for AY 2010-11**

5. The assessee has raised following ground of appeal for AY 2010-11:



“1. The Ld. Commissioner of Income-tax (Appeals) (hereinafter referred to as "Ld.CIT(A)") has erred in upholding the order of the Ld. Assessing Officer and disallowing the purchase to the extent of 12.5% of Rs. 1,04,34,421/- amounting to Rs. 13,04,303/- on account of purchase from non-genuine purchase parties.”

6. Brief facts for AY 2010-11 are as under:

- a. Return declaring income of Rs. 3,67,899/- was filed on 29.09.2010 and was processed u/s 143(1) of the Act. Subsequently, information was received from the DGIT Investigation Wing, Mumbai about a scam unearthed by Sales Tax Department regarding issue of hawala bills/accommodation entries by several parties in Mumbai. The assessee allegedly made purchases of Rs. 1,04,34,421/- from the some of the non-existent parties detected by the sales tax department. Accordingly, based on this information, the case was reopened u/s 147 of the Act and notice u/s 148 was issued on 16.09.2014. After making independent enquiry, the AO came to the conclusion that the assessee had indulged in non-genuine transactions with the intention of suppressing the true profits. He, therefore, made an addition of Rs. 13,04,303/- being 12.5% of the total non-genuine purchases amounting to Rs. 1,04,34,421/-.



b. The Ld. CIT(A) has upheld the order of the AO based on various decisions, specifically that of the Hon'ble Gujarat High Court in the case of CIT v/s Simit P. Shet (2013) 356 ITR 451.

7. We have considered the rival submissions and perused various judicial pronouncements cited by the Ld. AR as well as Ld. DR. The only issue for consideration is whether the element of profit estimated by the AO @12.5% in such bogus purchases is reasonable or not.

8. The assessee is engaged in trading in Ferrous and Non-ferrous Metals. Since, the assessee failed to discharge onus of proving the genuineness of the transactions in question, the AO has rightly proceeded to make the addition of profit element embedded in the total bogus purchases. Considering the nature of business of the assessee and other relevant facts as well as the judicial pronouncements, we deem it reasonable to estimate the profit @5% of the total non-genuine purchases of Rs. 1,04,34,421/-. Thus, the addition to the extent of 5% which works out 5,21,721/- is sustained. Thus, appeal of the assessee is partly allowed.

**ITA No. 4591/Mum/2023 for AY 2011-12**

9. The assessee has raised following ground of appeal for AY 2011-12:

a. *"The Ld. Commissioner of Income-tax (Appeals) [hereinafter referred to as "Ld.CIT(A)"] has erred in upholding the order of the Ld. Assessing Officer and disallowing the purchase to the extent of 12.5% of Rs.1,23,04,442 /- amounting to Rs. 15,38,055/- on account of purchase from non-genuine purchase parties."*



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A.Ys.2010-11 & 2011-12  
DINESH TARACHAND MEHTA

10. There is no change in the facts in AY 2011-12. In this year, the AO has made addition of Rs. 15,48,055/- @ 12.5% of the total non-genuine purchases of Rs. 1,23,04,442/. As discussed above, the addition to the extent of 5% of the non-genuine purchases is hereby sustained which works out to Rs. 6,15,222/-.

11. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the open court on 24.07.2024.

Sd/-

NARENDER KUMAR CHOUDHRY  
(JUDICIAL MEMBER)

Sd/-

RENU JAUHRI  
(ACCOUNTANT MEMBER)

Place: Mumbai

Date : 24.07.2024

ANIKET SINGH RAJPUT/STENO

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai