

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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.2906/M/2024
Assessment Year: 2009-10**

Mr. Manish P. Lathia, HUF 11-B Shri Lal Ashish, Garodia Nagar, Ghatkopar (East), Maharashtra - 400 077 PAN: AAEHM8671B (Appellant)	Vs.	Income Tax Officer- 27(2)(2), Station Tower, Navi Mumbai, Maharashtra - 400703 (Respondent)
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Present for:

Assessee by : Shri Mehul Shah, Ld. A.R.
Revenue by : Shri V.K. Chaturvedi, Sr. D.R

Date of Hearing : 12 .12.2024
Date of Pronouncement : 12.12.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 07.05.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2009-10.

2. Considering the peculiar facts and circumstances specifically to the effect that the Ld. Commissioner has affirmed the addition @ 12.5% of the bogus purchases and the Assessee is engaged in the business of ferrous articles and there are various judgments by the Jurisdictional Tribunal, wherein the addition @5% in the identical trade has been upheld, therefore, in the considered opinion of this Court, it would be appropriate to restrict the addition being the gross profit @ 5% of the alleged bogus purchases instead of 12.5% as made by the Assessing Officer (AO) and affirmed by the Ld. Commissioner.

Thus, the AO is directed to verify "*whether the purchases made by the Assessee as alleged bogus purchases, have already been subjected to profit & loss account*" and on finding answer "**Yes**" then to re-compute the income of the Assessee by considering the GP @ 5% in lieu of 12.5%, over and above the GP already shown by the Assessee. Otherwise, the addition as affirmed by the Ld. Commissioner would sustain.

3. In the result, the appeal filed by the Assessee is **partly allowed**.

Order pronounced in the open court on 12.12.2024.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.