

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

**SHRI N. K. CHOUDHRY, JM**

1. I.T.A. No. 1636/Mum/2023  
(Assessment Year: 2010-11)  
&  
2. I.T.A. No. 1637/Mum/2023  
(Assessment Year: 2009-10)

**Kailash Judhistir Sahu**  
13, Gulab Industrial Estate,  
Andheri Kurla Road,  
Sakinaka , Mumbai  
PAN No. AAIPS 9456 Q

Vs.

**CIT(A) -38,**  
Mumbai

**Appellant)** : **Respondent)**

**Appellant by** : Shri Ashwin Chhag, Ld. CA  
**Respondent by** : Shri Anurag Tripathi, Ld. Sr.  
DR

**Date of Hearing** : 20.09.2023  
**Date of Pronouncement** : 10.10.2023

O R D E R

**Per N. K. Choudhry, Judicial Member:**

The Assessee/Appellant herein has preferred these appeals against the orders even dated 09.02.2023 impugned herein passed by National Faceless Appeal Centre, Delhi {in short 'NFAC'}/Ld. Commissioner of Income Tax (in short Ld. Commissioner") u/s 250 of the Income Tax Act 1961 (in short 'the Act') for AYs 2009-10 & 2010-11.

**2.** As both the cases having involved almost identical issues, therefore, for sake of brevity, are being disposed of by this composited order.

**3.** ITA No. 1637/Mum/2023 is a lead case and during the course of scrutiny proceedings in this case , it was observed by the AO that the Assessee during the AY under consideration made total purchase of Rs. 88,32,789/- and has submitted the list of purchase parties, sale parties, sundry creditors and debtors, therefore, in order to verify the genuineness of the purchases made, the AO issued the notices u/s 133(6) of the Act to the supplier parties at the addresses provided by sale tax department and as per PAN data base, however, the notices were returned back by the postal authority with the remarks 'not known'. Consequently, as per show cause notice u/s 142(1) dated 11<sup>th</sup> Feb, 2015, the Assessee was asked to produce the said parties along with relevant details, which the Assessee failed to produce, however the Assessee's representative vide letter dated 26<sup>th</sup> May, 2015 while submitting a copy of acknowledgement for the last 2 years and details of GP & NP ratio, requested the AO to consider the gross profit rate as determined and make the additions to the return income. Therefore, considering, the peculiar facts and circumstances, as the Assessee failed to produce the supplier parties as well as details qua supplier parties allegedly recorded in its ledger account/ books of account and also failed to produce any cogent evident to prove the transactions as genuine, the AO ultimately made the addition of Rs. 7,71,833/- being

12.99% of total purchases of Rs. 59,41,753/- and added the same in the income of the Assessee.

**4.** The Id. CIT(A) on appeal, by following decisions in the case of Hon'ble High Courts of Mumbai and Gujarat respectively in the cases of Pr. CIT vs. JK Surface Coatings Pvt. Ltd. dated 28/10/2021 and CIT vs. Simit P. Sheth [2013] 38 taxmann.com 385 (Gujarat) restricted the addition to 12.5% instead of @ 12.99% of the unproved/non-genuine purchases. The Assessee being aggrieved is in appeal before this bench.

**5.** The Assessee raised various grounds on merit as well as on legal aspects. The Assessee also raised additional grounds of appeal challenging the legality of the passing of the assessment order. The Assessee on merit also relied upon various judgments of the Tribunal including in the cases of M/s Noble Corporation vs. ITO, Ward 33(1)(1), Mumbai in ITA Nos. 6962 and 6963-Mum-2017 decided on dated 4.4.2018 and in the case of M/s Paramshakti Distributor Pvt vs. ACIT, Cent. Cir.-45, Mumbai in ITA No. 8748/Mum/2010 and ITA No. 9223 & 9224/Mum/2010 decided on dated 09.10.2015 etc. and claimed that the Assessee has already shown the profit and accounted the amount of the purchase consideration and therefore, no such addition is warranted.

**6.** On the contrary, the Id. DR refuted the claim of the Assessee.

**7.** Having heard the parties and perused the material available on record, It has been observed that the Assessee before the AO, himself has admitted his inability to produce the parties from whom the alleged purchases have been made and shown and in fact vide letter dated 26<sup>th</sup> May, 2015, requested the AO to consider the gross profit as determined and make additions to the returned income and therefore, in the constrained circumstances, the AO made the addition of an amount of Rs. 7,71,833/- (12.99 % of Rs. 59,41,753/-) as embodied in the said purchases and on appeal, the Id. CIT(A) reduced the addition and restricted to 12.5% of the unproved/non-genuine purchases. Even otherwise in the cases relied upon by the Assessee, the Hon'ble Co-ordinate Benches of the Tribunal restricted the addition qua bogus purchases @ 6 to 7 % of the sales, hence, considering the peculiar facts and circumstances, I deem it appropriate to direct the AO to restrict the addition being profit embodied, from 12.5% to 6% of the alleged purchases made. Consequently the addition is confirmed only to the extent of 6% of the purchases made.

However, I clarify that in any case, if the alleged purchases and profit embedded therein have already shown and offered to tax at higher rate, as claimed by the Assessee and has been considered by the AO, then the addition shall be restricted to the amount already offered to tax by the Assessee and the Assessee shall not be entitled for any refund.

As I decided the appeal on merits, hence not dwelling into other grounds of appeal, as the same would prove futile exercise.

**8.** In the result, both the appeals filed by the Assessee are partly allowed in the same terms.

*Orders pronounced in the open court on 10<sup>th</sup> Oct, 2023.*

Sd/-  
(N. K. Choudhry)  
Judicial Member

मुंबई Mumbai;दिनांक Dated : 10/10/2023  
*PS, Ganesh Kumar (on tour)*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
4. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

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