



IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI DR. A.L. SAINI, ACCOUNTANT MEMBER

ITA no.844/Mum./2017
(Assessment Year : 2009-10)

Income Tax Officer
Ward-19(2)(3), Mumbai

..... Appellant

v/s

Shri Mukesh S. Doshi
M/s. Maxwell Forge Industries
63/A, 1st Kubharwada Bhandar Street
Near Gol Deval, Mumbai 400 004
PAN – ABQPD5578B

..... Respondent

Revenue by : Shri Saurabh Kumar Rai
Assessee by : Shri Reepal Tralshwalla

Date of Hearing – 20.06.2018

Date of Order – 20.06.2018

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal by the Revenue is against order dated 28th November 2016, passed by the learned Commissioner (Appeals)-30, Mumbai, for the assessment year 2009-10.

2. The dispute in the present appeal is confined to the decision of the learned Commissioner (Appeals) in sustaining the addition @ 12.5% on the alleged bogus purchases.

3. Brief facts are, the assessee an individual carries on the business of trading in ferrous and non-ferrous metals through his proprietary concern M/s. Maxell Forge Industries. For the assessment year under dispute, the assessee had originally filed its return of income on 2nd September 2009, declaring total income of ₹ 7,03,159. Subsequently, on the basis of information received from DGIT, Investigation Wing, Mumbai, to the effect that purchases worth ₹ 61,77,214, claimed to have been made from five parties are not genuine as those parties have been identified as accommodation entry providers by the Sales Tax / VAT Department by the Maharashtra Government, the Assessing Officer re-opened the assessment under section 147 of the Income Tax Act, 1961 (for short "*the Act*"). During the assessment proceedings, the Assessing Officer, to verify the genuineness of the purchases, issued notices under section 133(6) of the Act to the concerned parties. However, as observed by the Assessing Officer, the notices were returned back by the postal authorities without being served. Thereafter, though, the Assessing Officer called upon the assessee to produce the concerned parties before him and furnish their current addresses, however, as alleged by the Assessing Officer, the assessee could neither produce the concerned parties nor furnish their current addresses. The assessee simply furnished ledger account of those parties in assessee's book, copies of purchase bills and bank

statement showing payment made through bank. The Assessing Officer was not convinced with the evidences submitted before him by the assessee and ultimately concluded that the purchases shown by the assessee from the five parties cannot be treated as genuine. Accordingly, after rejecting the books of account of the assessee, he proceeded to add the amount of ₹ 61,77,214, representing the alleged bogus purchases as unexplained expenditure of the assessee. Being aggrieved of such addition, the assessee preferred an appeal before first appellate authority.

4. the learned Commissioner (Appeals) after considering the submissions of the assessee in the context of facts and material on record, though, agreed with the Assessing Officer that assessee has failed to prove the genuineness of the purchases claimed to have been made from the concerned parties, however, ultimately he concluded that the entire amount representing the alleged bogus purchases cannot be treated as income of the assessee, but, only the profit element embedded therein should be considered for addition. Accordingly, he directed the Assessing Officer to restrict the addition to 12.5% of the alleged bogus purchases.

5. The learned Departmental Representative contesting the aforesaid decision of the learned Commissioner (Appeals) submitted

that neither before the Assessing Officer nor before the learned Commissioner (Appeals) could the assessee establish the genuineness of purchases made. He submitted, even the learned Commissioner (Appeals) has also accepted this fact. Further, the learned Commissioner (Appeals) has also observed that the assessee failed to establish one-to-one co-relation between the purchases and sales. He submitted, in such circumstances, there is no reason to restrict the addition to 12.5% of the bogus purchases.

6. The learned Authorised Representative strongly relied upon the observations of the learned Commissioner (Appeals).

7. We have considered rival submissions and perused materials on record. As could be seen from the facts on record, certain purchases shown by the assessee were treated as bogus, since, as per the information obtained from the Sales Tax / VAT Department of Government of Maharashtra, such selling parties are only providing accommodation entries. It is also a fact that notices issued under section 133(6) of the Act were returned un-served. However, the learned Commissioner (Appeals) has recorded a factual finding that the Assessing Officer has not disputed the sale turnover of the assessee. Thus, in such circumstances, the logical conclusion which one can arrive at is, in the absence of purchases made the assessee

could not have achieved the sale turnover. Therefore, there is a strong possibility that the assessee may not have purchased the goods from the declared source but from grey market by avoiding payment of sales tax / VAT. In these circumstances, the decision of the learned Commissioner (Appeals) in restricting the addition to 12.5% of the alleged bogus purchases to take care for the revenue leakage, if any, appears to be reasonable. More so, considering the fact that the Assessing Officer himself while dealing with identical issue in assessee's own case for assessment year 2010-11 and 2011-12, has restricted the addition to 12.5% of the alleged bogus purchases. In view of the aforesaid, we do not find any infirmity in the order of the learned Commissioner (Appeals) on this issue. Grounds raised are dismissed.

8. In the result, Revenue's appeal is dismissed/

Order pronounced in the open Court on 27.06.2018

Sd/-
DR. A.L. SAINI
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 27.06.2018

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai