



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.2107/Mum./2017  
(Assessment Year : 2006-10)

Aress Trading Co. Pvt. Ltd.  
B/G 01, Sair Prasad CHS Ltd.  
Shanti Nagar, Mandpeshwar Road  
Borivali (W), Mumbai 400 003  
PAN – AABCA0239M

..... Appellant

v/s

Income Tax Officer  
Ward-12(1)(2), Mumbai

..... Respondent

Assessee by : None  
Revenue by : Shri Swapan Kumar Bepari

Date of Hearing – 25.09.2018

Date of Order – 28.09.2018

**ORDER**

Aforesaid appeal has been filed by the assessee challenging the order dated 1<sup>st</sup> May 2015, passed by the learned Commissioner (Appeals)-20, Mumbai, for the assessment year 2009-10.

2. When the appeal was called for hearing, no one was present for the assessee. It is seen from record, notice of hearing issued by registered post to the assessee in the address mentioned in the appeal memo has returned un-served with the remark of the postal authority

"left". Therefore, I proceed to dispose off the appeal ex parte qua the assessee after hearing the learned Departmental Representative.

3. Brief facts are, the assessee, a company, is manufacturer of nuts and bolts. For the assessment year under dispute, assessee filed its return of income on 25<sup>th</sup> September 2009, declaring total income of ₹ 2,85,600. Return of income filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 (for short "*the Act*"). Subsequently, on the basis of information received from DGIT (Inv.) as well as Sales Tax Department, Government of Maharashtra that purchases of ₹ 13,48,698, claimed to have been made from two parties are not genuine, since, the said selling parties have been identified by the Sales Tax Department as hawala operators providing accommodation entries, the Assessing Officer re-opened the assessment under section 147 of the Act. In course of assessment proceedings, the Assessing Officer to ascertain the genuineness of purchases made issued notices under section 133(6) of the Act to the selling parties. However, either the notice returned un-served or was not complied with. Therefore, the Assessing Officer called upon the assessee to produce the concerned parties to prove the genuineness of purchases. Further, the Assessing Officer also called upon the assessee to produce the stock register and other documentary evidences in support of purchases. As observed by the Assessing Officer, the

assessee could only furnish ledger account copies and payment details. Even, the assessee was unable to furnish confirmations from the concerned parties or delivery challans and transportation bills to demonstrate delivery of goods. Thus, the Assessing Officer treating the purchases as non-genuine added back the amount of ₹ 13,48,698. Being aggrieved of such addition, the assessee preferred appeal before the first appellate authority.

4. The learned Commissioner (Appeals) after considering the submissions of the assessee, though, agreed with the Assessing Officer that the assessee has failed to prove the genuineness of purchases, however, he restricted the addition to ₹ 6,74,349, being 50% of the non-genuine purchases.

5. I have heard the learned Departmental Representative and perused the material on record. As regards the validity of assessment under section 147 of the Act, it is evident that return of income filed by the assessee was processed under section 143(1) of the Act, hence, was not subjected to scrutiny. Subsequently, the Assessing Officer received specific information indicating escapement of income on account of non-genuine purchases. Thus, it is clear that the Assessing Officer had tangible material in his possession to form a belief that income chargeable to tax has escaped assessment. That being the case, re-opening of assessment under section 147 of the Act is valid.

6. As regards the merits of the addition sustained by the learned Commissioner (Appeals), it is a fact on record, while the Assessing Officer added the entire non-genuine purchase, the learned Commissioner (Appeals) has restricted the addition to 50% of such purchases. Having regard to the consistent view of the Tribunal in these type of cases, I am of the opinion that addition @ 12.5% of the non-genuine purchases would be reasonable. Accordingly, I direct the Assessing Officer to sustain the addition to that extent. Grounds raised are partly allowed.

7. In the result, assessee's appeal is partly allowed.

Order pronounced in the open Court on 28.09.2018

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 28.09.2018**

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