



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.3099/Mum./2017
(Assessment Year : 2009-10)

Sanjay A. Shah
B-801, Gokul Apartment
Opp. Dev Nagar
New Sai Baba Nagar
Kandivali (W), Mumbai 400 067
PAN - AAZPS8709F

..... Appellant

v/s

Income Tax Officer
Ward-33(3)(3), Mumbai

..... Respondent

Assessee by : Shri Sagar P. Badani
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 6th May 2015, passed by the learned Commissioner (Appeals)-45, Mumbai, for the assessment year 2009-10.

2. The dispute in the present appeal is confined to the addition of ₹ 10,60,437, made on account of non-genuine purchase.

3. Brief facts are, the assessee an individual is engaged in trading of tailoring material. For the assessment year under dispute, the

assessee filed his return of income on 17th August 2009, declaring total income of ₹ 3,67,430. Assessment in case of the assessee was completed under section 143(3) of the Income Tax Act, 1961 (for short "*the Act*"), vide order dated 17th November 2011. Subsequently, on the basis of information received from DGIT (Inv.), Mumbai, as well as Sales Tax Department, Government of Maharashtra that purchases of ₹ 1,18,30,514, made from 30 entities are not genuine as they are identified as hawala operators by the Sales Tax Department and are only providing accommodation entries, the Assessing Officer re-opened the assessment under section 147 of the Act. During the assessment proceedings, to ascertain the genuineness of purchases, the Assessing Officer issued notices under section 133(6) of the Act to the concerned parties calling for certain information. As observed by the Assessing Officer, none of the notices were complied with due to the reasons mentioned by the Assessing Officer. Therefore, the Assessing Officer called upon the assessee to prove the genuineness of purchases by producing stock register, lorry receipt with delivery challan, etc. Further, the Assessing Officer also directed the assessee to produce the concerned selling parties before him. As alleged by the Assessing Officer, the assessee neither produced the documents called for nor produced the parties before him. Accordingly, the Assessing Officer rejected the books of account of the assessee and proceeded to hold the purchases made to be non-genuine. However, instead of

disallowing the entire non-genuine purchases, the Assessing Officer restricted the addition by estimating the gross profit @ 14.75% of the non-genuine purchases. This resulted in addition of ₹ 10,60,437. Being aggrieved of such addition, assessee preferred appeal before the learned Commissioner (Appeals). However, he also sustained the addition made by the Assessing Officer.

4. The only submissions made before me by the learned Authorised Representative is, estimation of profit of 14.75% is on the higher side, hence, should be reduced to 12.5%. Whereas, the learned Departmental Representative relied upon the observations of the learned Commissioner (Appeals).

5. I have considered rival submissions and perused materials on record. On examining the facts and material on record, I am of the view that the assessee has failed to prove the genuineness of disputed purchases. In fact, before me, the assessee has only disputed the estimation of profit @ 14.75%. After considering the overall facts and circumstances of the case as well as the nature of business carried on by the assessee, I am of the view that estimation of profit @ 12.5% of the non-genuine purchases would be reasonable. Accordingly, I direct the Assessing Officer to restrict the addition to 12.5% of the non-genuine purchases. Grounds raised are partly allowed.

6. 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