



IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.628/Mum./2018
(Assessment Year : 2011-12)

Omprakash Agarwal
4th Floor, Room no.71
12/2, Kalbadevi Road
Fanawadi, Mumbai
PAN - ADXPA4476G

..... Appellant

v/s

Income Tax Officer
Ward-18(2)(4), Mumbai

..... Respondent

Assessee by : None
Revenue by : Shri Swapan Kumar Bepari

Date of Hearing - 24.09.2018

Date of Order - 05.10.2018

ORDER

Aforesaid appeal has been filed by the assessee challenging the order dated 10th November 2017, passed by the learned Commissioner (Appeals)-29, Mumbai, for the assessment year 2011-12.

2. When the appeal was called for hearing, none was present on behalf of the assessee in spite of service of hearing notice issued per registered post, which is evident from the postal acknowledgment placed on record. 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, an individual, is engaged in the business of reseller and broker of iron and steel. For the assessment year under dispute, the assessee filed his return of income on 24th September 2011, declaring loss of ₹ 7,83,391. The 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 the Sales Tax Department through DGIT (Inv.), Mumbai, revealing that purchase of goods worth of ₹ 1,12,11,810 claimed to have been made from Sai International Impex is not genuine, the Assessing Officer re-opened the assessment under section 147 of the Act. During the assessment proceedings, the Assessing Officer on the basis of information available on record having found that the Sales Tax Department has identified Sai International Impex, the party from whom the assessee had shown the purchases, is a hawala operator providing accommodation entries, called upon the assessee to prove the genuineness of such purchases through proper documentary evidences. As observed by the Assessing Officer, except furnishing purchase invoices and bank statement, the assessee was unable to furnish any other documentary evidences, including delivery challan and transportation bills, to prove actual

delivery of goods. Thus, the Assessing Officer rejected the books of account of the assessee and treated the purchase of goods worth ₹ 1,12,11,810 as non-genuine. However, he restricted the addition on account of such non-genuine purchase by estimating the gross profit @ 12.5% of the purchase made, which worked out to ₹ 14,01,476. Being aggrieved of the aforesaid addition made by the Assessing Officer, the assessee preferred appeal before the first appellate authority. However, the learned Commissioner (Appeals) sustained the addition made by the Assessing Officer.

4. I have considered the submissions of learned Departmental Representative and perused materials on record. It is evident, neither before the Assessing Officer nor before the learned Commissioner (Appeals) the assessee could conclusively prove the genuineness of purchases made of ₹ 1,12,11,810 by furnishing proper documentary evidence. No delivery challan nor transportation bill was furnished to prove actual delivery of goods. The assessee was unable to produce the concerned party or even any confirmation from the seller in support of purchase made. In the aforesaid view of the matter, addition made @ 12.5% of the non-genuine purchases, in my view, is reasonable, hence, deserves to be upheld. As regards the validity of re-opening of assessment under section 147 of the Act, it is evident, after processing of return of income filed by the assessee the

Assessing Officer received specific information from the Sales Tax Department, Government of Maharashtra, indicating escapement of income on account of non-genuine purchase made by the assessee. That being the case, the Assessing Officer was within his power to exercise jurisdiction under section 147 of the Act. In view of the aforesaid, grounds raised are dismissed.

5. In the result, assessee's appeal is dismissed.

Order pronounced in the open Court on 05.10.2018

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 05.10.2018

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