



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.6063/Mum./2018  
(Assessment Year : 2009-10)

Income Tax Officer  
Ward-2(1)(3), Mumbai

..... Appellant

v/s

Manoj D. Chitalia  
B/17, Putlibai Kapole CHS Ltd.  
167/C, S.V. Road, Vile Parle (W)  
Mumbai 400 056 PAN – ADDPC4819M

..... Respondent

Revenue by : Shri Chaudhary Arunkumar Singh  
Assessee by : Ms. Poonam Naram

Date of Hearing – 03.09.2019

Date of Order – 13.09.2019

**ORDER**

Captioned appeal by the assessee is against order dated 13<sup>th</sup> August 2018, passed by the learned Commissioner of Income Tax (Appeals)-37, Mumbai, pertaining to the assessment year 2009-10.

2. The dispute in the present appeal is confined to the decision of learned Commissioner (Appeals) in restricting the disallowance to 12.5% of non-genuine purchases.

3. Brief facts are, the assessee, an individual, is engaged in the business of trading in iron and steel. For the assessment year under consideration, the assessee filed his return of income on 14<sup>th</sup> September 2009, declaring total income of ₹ 4,39,217. The return of income filed by the assessee was initially processed under section 143(1) of the Income-tax Act, 1961 (for short "*the Act*"). Subsequently, on the basis of information received from the DGIT (Inv.), Mumbai, and the Sales Tax Department, Government of Maharashtra, indicating that the purchases worth ₹ 17,83,402, claimed to have been made from two parties are in the nature of accommodation entries, the Assessing Officer re-opened the assessment under section 147 of the Act. During the assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of the purchases through supporting evidence. Further, to verify the genuineness of purchases, the Assessing Officer issued notices under section 133(6) of the Act, which either were not responded to or could not be served. Further, he observed that the assessee failed to furnish any evidence to demonstrate actual delivery of goods. Thus, ultimately he held that the purchases claimed to have been made by the assessee are not genuine. Accordingly, he proceeded to reject the Books of Account of the assessee and added back the purchases of ₹ 17,83,402, by treating it as unexplained

expenditure under section 69C of the Act. The assessee challenging the aforesaid addition before learned Commissioner (Appeals), who restricted the addition to 12.5% of the non-genuine purchases.

4. I have heard rival submissions and perused material on record. As could be seen from the facts on record, the Assessing Officer has made the addition of entire purchases, alleged to be non-genuine, on the reasoning that the assessee was unable to produce the concerned parties and further, could not prove the actual delivery of goods from the concerned parties. It is evident, the Assessing Officer has not doubted the sales effected by the assessee. Therefore, in the absence of purchases, the assessee could not have effected the corresponding sales. This leads to an inference that the assessee may not have purchased the goods from the declared source but from the grey market, thereby, not paying Sales Tax/VAT which may have helped the assessee in earning more profit. In such circumstances, the entire purchases held to be non-genuine cannot be added to the income of the assessee but only the profit element embedded therein can be considered for addition. Therefore, the decision of learned Commissioner (Appeals) in restricting the addition to 12.5% of the non-genuine purchases being in conformity with various decisions of the Tribunal on identical issue, I do not find any reason to interfere with it. Accordingly, the grounds raised are dismissed.

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

Order pronounced in the open Court on 13.09.2019

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 13.09.2019**

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

Assistant Registrar  
ITAT, Mumbai