



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.6058/Mum./2018
(Assessment Year : 2009-10)

Asstt. Commissioner of Income Tax
Circle-19(2), Mumbai

..... Appellant

v/s

Kaniz Fatima Saqqai Abdi
3rd Floor, 304, Corneliyam Building
104, August Kranti Marg
Mumbai 400 036
PAN - AADPA6492R

..... Respondent

Assessee by : None
Revenue by : Shri Chaudhary Arunkumar Singh

Date of Hearing - 05.09.2019

Date of Order - 25.09.2019

ORDER

PER SAKTIJIT DEY, J.M.

Captioned appeal by the Revenue is against the order dated 14th June 2018, passed by the learned Commissioner of Income Tax (Appeals)-5, Mumbai, pertaining to the assessment year 2009-10.

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. Accordingly, I proceed to dispose off the appeal ex-parte qua the assessee after hearing the

learned Departmental Representative and on the basis of material on record.

3. The dispute in the present appeal is confined to the deletion of addition made on account of non-genuine purchases.

4. Brief facts are, the assessee was an individual carrying on business in civil and plumbing works. For the assessment year under consideration, the assessee filed the return of income on 29th September 2009, declaring total income of ₹ 24,66,030. Originally, the assessment in case of the assessee was completed under section 143(3) of the Act accepting the income returned by the assessee. Subsequently, on the basis of information received, that the purchases worth ₹.99,756, claimed to have been made by the assessee is not genuine as they are in the nature of accommodation bills obtained from hawala operators, 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 purchases. Further, the Assessing Officer also conducted independent enquiry by issuing notice under section 133(6) of the Act to the selling dealers. As observed by the Assessing Officer, the assessee was unable to furnish any corroborative evidence to establish the genuineness of purchases. Accordingly, he proceeded to

treat the purchases of ₹ 99,756, as non-genuine and added back to the income of the assessee. Against the assessment order so passed, the assessee preferred appeal before the first appellate authority.

5. The learned Commissioner (Appeals), after considering the submissions of the assessee, restricted the addition to 12.5% of the non-genuine purchases.

6. Heard the learned Departmental Representative and perused the material on record. It is evident, not only the present appeal but the impugned order of the learned Commissioner (Appeals) is in the name of a dead person i.e., Late Mrs. Kaniz Fatima Saqqai Abdi. As per the settled legal principle, no order can be passed in the name of a dead person without substituting the legal heir. Therefore, without bringing a proper legal heir on record, the impugned order passed by the learned Commissioner (Appeals) is not sustainable in the eyes of law. For the aforesaid reason, I have no hesitation in setting aside the impugned order of the learned Commissioner (Appeals) and restoring the issue raised in the present appeal to his file for de novo adjudication after bringing on record the legal heirs of the assessee. With the aforesaid observations, the grounds are allowed for statistical purposes.

7. In the result, appeal is allowed for statistical purposes.
Order pronounced in the open Court on

**SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED:

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*

By Order

Assistant Registrar
ITAT, Mumbai