



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.6085/Mum./2018
(Assessment Year : 2009-10)

Nandini Anup Surve
G-1403, Eternity Teen Hat Naka
Kanakia Spaces, Thane 400 601
PAN - AJNPS5422J

..... Appellant

v/s

Income Tax Officer
Ward-3(1), Thane

..... Respondent

Assessee by : Shri Rajesh Athavale
Revenue by : Shri Chaudhary Arunkumar Singh

Date of Hearing - 03.09.2019

Date of Order - 18.09.2019

ORDER

PER SAKTIJIT DEY, J.M.

Captioned appeal by the assessee is against the order dated 4th June 2018, passed by the learned Commissioner of Income Tax (Appeals)-2, Pune, for the assessment year 2009-10.

2. Ground no.1.2, is not pressed, hence dismissed.

3. Ground no.1.7, being general in nature does not require adjudication.

4. The rest of the grounds are on the issue of addition of ₹ 11,66,082, made on account of non-genuine purchases.

5. Brief facts are, the assessee, an individual, is engaged in the business of manufacturing engineering goods through her proprietary concern M/s. M.K. Enterprises. For the assessment year under dispute, the assessee filed her return of income on 20th September 2009, declaring income of ₹ 4,92,510. 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 Sales Tax Department, Government of Maharashtra that purchases worth ₹ 11,66,082, claimed to have been made by the assessee from three parties are not genuine, as they are in the nature of accommodation bills, the Assessing Officer re-opened the assessment under section 147 of the Act. In the course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases made by furnishing corroborating evidences. Further, to verify the genuineness of such purchases, the Assessing Officer conducted independent enquiry by issuing notices under section 133(6) of the Act to the concerned parties. However, as alleged by the Assessing Officer, all such notices returned back un-served by the postal authority. Further, attempt

made by the Assessing Officer to ascertain the whereabouts of the concerned parties through Ward Inspector also proved futile. It is observed by the Assessing Officer that except furnishing the Profit & Loss Account, Balance Sheet, party wise details of purchase and sale, details of sundry creditors / debtors, copy of VAT and CST return, the assessee failed to furnish any other corroborative evidence, such as, stock register, transportation document, delivery challan, etc. to prove the genuineness of purchases. Accordingly, he treated the purchases of ₹ 11,66,082, as non-genuine and added back to the income of the assessee. The aforesaid addition made by the Assessing Officer was also sustained by learned first appellate authority.

6. The learned Authorised Representative submitted, in the course of assessment proceedings, the assessee had furnished purchase bills, payment details, quantitative tally of purchases, consumption and sales with party wise details. He submitted, the Assessing Officer has not disputed the consumption of raw materials and sale of finished products. In such circumstances, disallowance of entire purchases is improper. He submitted, at the best the profit element embedded in such purchases can be considered for addition.

7. The learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

8. I have considered rival submissions and perused material on record. The facts on record reveal that before the Departmental Authorities, the assessee has not been able to conclusively prove genuineness of purchases. Even, attempt made by the Assessing Officer to independently verify the purchases bore no result. In such circumstances, assessee's claim of purchases made being genuine cannot be accepted. However, the fact that the assessee had furnished quantitative details relating to purchase, consumption and sale of goods cannot be completely overlooked. Thus, a reasonable presumption can be drawn that the assessee may not have purchased the goods from the declared source but has purchased them from third parties and for regularizing such purchases has obtained accommodation bills. In such circumstances, the entire purchases made by the assessee cannot be disallowed and added back to the income of the assessee. Rather, it would be reasonable to estimate the profit element embedded in such purchases and consider it for addition. In the peculiar facts and circumstances of the case, I am of the view that addition @ 12.5% of the non-genuine purchases would

be reasonable. Accordingly, I direct the Assessing Officer to restrict the addition to 12.5% of ₹ 11,66,082.

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

Order pronounced in the open Court on 20.09.2019

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 20.09.2019

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

		Date	Initial	
1.	Draft dictated on	06.09.2019	}	Sr.PS
2.	Draft placed before author	09.09.2019		Sr.PS
3.	Draft proposed & placed before the second member	--		JM/AM
4.	Draft discussed/approved by Second Member	--		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	20.09.2019	}	Sr.PS
6.	Date of pronouncement	20.09.2019		Sr.PS
7.	File sent to the Bench Clerk	23.09.2019		Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			