



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.5699/Mum./2018
(Assessment Year : 2007-08)

Asstt. Commissioner of Income Tax
Circle-19(3), Mumbai

..... Appellant

v/s

Rishabh Steel House
101/102, Rishabh House
301, Duncan Road
M.A. Road, Mumbai 400 004
PAN – AACFR2807C

..... Respondent

Revenue by : Smt. Jothi Lakshmi Nayak
Assessee by : Ms. Rutuja N. Pawar

Date of Hearing – 09.10.2019

Date of Order – 25.10.2019

ORDER

PER SAKTIJIT DEY. J.M.

Captioned appeal has been filed by the Revenue challenging the order dated 16th July 2018, passed by the learned Commissioner OF Income Tax (Appeals)-30, Mumbai, pertaining to the assessment year 2007-08 and 2011-12. However, in the present appeal, we are concerned with assessment year 2007-08 only.

2. The dispute in the present appeal is confined to the reduction of addition made on account of non-genuine purchases to 5%.

3. Brief facts are, the assessee, a partnership firm, is engaged in the business of trading in ferrous and non-ferrous metals. For the assessment year under consideration, the assessee filed return of income on 30th October 2007, declaring total income of ₹ 15,81,001. The return of income filed by the assessee was initially processed under section 143(1) of the Act. Subsequently, on the basis of information received from the DGIT (Inv.), Mumbai, and the Sales Tax Department, Government of Maharashtra, that the assessee is one of the beneficiary of accommodation bills provided by certain entities identified as hawala operators by the Sales Tax Department, 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 of ₹ 93,68,034, claimed to have been made from three parties. Further, to verify the genuineness of such purchases, the Assessing Officer conducted independent enquiry by issuing notices under section 133(6) of the Act. However, all such notices returned back unserved. Further, it is observed by the Assessing Officer that in response to the query raised by him, the assessee furnished copy of purchase bills, bank statement, sales tax / VAT challans, ledger account of purchases in assessee's books, etc. However, the assessee could not furnish delivery challan, lorry receipts, etc. Thus, ultimately, the Assessing

Officer concluded that the purchases are not genuine. However, relying upon the decision of the Hon'ble Gujarat High Court in CIT v/s Simit P. Sheth, [2013] 356 ITR 451 (Guj.), the Assessing Officer estimated the profit on the non-genuine purchases @ 20% and accordingly added back an amount of ₹ 18,73,607. Being aggrieved with the aforesaid addition, the assessee preferred appeal before the first appellate authority.

4. After considering the submissions of the assessee and having found that while deciding identical nature of dispute in assessee's own case in assessment years 2006-07, 2009-10, 2010-11 and 2011-12, the Tribunal has restricted the addition to 5% of the non-genuine purchases, learned Commissioner (Appeals) followed the same and directed the Assessing Officer to restrict the addition to 5% of the non-genuine purchases.

5. The learned Departmental Representative strongly relying upon the observations of the Assessing Officer submitted, once the purchases were found to be non-genuine, the Assessing Officer should have added the entire purchases. She submitted, the Assessing Officer was more than reasonable in estimating the profit @ 20%. Thus, she submitted, the addition made by the Assessing Officer should be restored.

6. Per-contra, the learned Authorised Representative submitted, while deciding identical issue in earlier assessment years, the Tribunal has restricted the addition to 5% of the non-genuine purchases. She submitted, facts being identical, learned Commissioner (Appeals) was justified in following the decision of the Tribunal.

7. We have considered rival submissions and perused material on record. Undisputedly, though, the Assessing Officer had observed that the assessee was not able to prove the genuineness of purchases, however, ultimately, he has estimated profit on such purchases @ 20% for the purpose of making the addition. Relying upon the decision of the Tribunal in assessee's own case in assessment years 2006-07, 2009-10, 2010-11 and 2011-12, learned Commissioner (Appeals) has restricted the addition to 5% of the non-genuine purchases. On a perusal of the aforesaid order dated 22nd December 2017, passed by the Tribunal, it is noticed that the Tribunal after considering all aspects of the issue including the percentage of profit generated in this particular line of business carried on by the assessee had ultimately held that the profit on non-genuine purchases should be estimated @ 5%. It is relevant to observe, learned Commissioner (Appeals)'s decision in respect of assessment year 2011-12 in the impugned order, in the meanwhile, has been upheld by the Tribunal while deciding the cross appeals by the assessee and Revenue in the appeal

being ITA no.1326/Mum./2016 and ITA no.1208/Mum./2016, in the order cited supra. There being no material change in facts of the present case, respectfully following the decision of the Co-ordinate Bench cited supra in assessee's own case, we uphold the decision of learned Commissioner (Appeals) on the issue. Grounds raised are dismissed.

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

Order pronounced in the open Court on 25.10.2019

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 25.10.2019

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