



IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

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

ITA no.5707/Mum./2018
(Assessment Year : 2011-12)

Income Tax Officer
Ward-19(1)(4), Mumbai

..... Appellant

v/s

Dineshkumar J. Jain
57, Room no.222, Tardeo Road
Mumbai 400 007
PAN – AGUPJ6735F

..... Respondent

Assessee by : None
Revenue by : Smt. Jothi Lakshmi Nayak

Date of Hearing – 09.10.2019

Date of Order – 25.10.2019

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal by the Revenue is against the order dated 30th July 2018, passed by the learned Commissioner of Income Tax (Appeals)-30, Mumbai, for the assessment year 2011-12.

2. The Revenue has filed the present appeal being aggrieved with the decision of learned Commissioner (Appeals) in reducing the

addition made on account of non-genuine purchase from 12.5% to 6.5%.

3. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. Even, the assessee has not filed any application seeking adjournment. In view of the aforesaid, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

4. Brief facts are, the assessee, an individual, is engaged in the business of trading in ferrous and non-ferrous metals. For the assessment year under consideration, the assessee filed his return of income on 26th September 2011, declaring total income of ₹ 4,42,694. 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, as well as the Sales Tax Department, Government of Maharashtra, that the assessee is a beneficiary of accommodation bills representing purchases worth ₹ 86,30,304, claimed to have been made from five parties, 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 aforesaid

purchases. As alleged by the Assessing Officer, the assessee could not furnish the full details called for. Further, the notices issued under section 133(6) of the Act to the concerned selling dealers calling for certain information also returned back unserved. Based on the aforesaid facts, the Assessing Officer concluded that the purchases made by the assessee from the concerned parties are not genuine. Accordingly, after rejecting the Books of Account of the assessee, the Assessing Officer proceeded to estimate the profit element on the non-genuine purchases @ 12.5% and made an addition of ₹ 10,78,788. The assessee challenged the aforesaid addition before the first appellate authority.

5. Learned Commissioner (Appeals), after considering the submissions of the assessee in the context of facts and material on record and relying upon the decision of the Hon'ble Gujarat High Court in CIT v/s Simit P. Sheth, [2013] 356 ITR 451 (Guj.), restricted the addition to 6.5% of the non-genuine purchases.

6. The learned Departmental Representative strongly relying upon the observations of the Assessing Officer submitted, there is no justifiable reason on the part of learned Commissioner (Appeals) to reduce the addition to 6.5%. She submitted, the Assessing Officer was

more than reasonable in estimating the profit @ 12.5% instead of adding the entire non-genuine purchases.

7. We have heard the learned Departmental Representative and perused the material available on record. Undisputed, the Assessing Officer had treated the purchases as non-genuine. However, ultimately, he has restricted the addition to 12.5% of the non-genuine purchases. Thus, it appears from the aforesaid action of the Assessing Officer that he was convinced that the assessee must have purchased the goods from some other sources by avoiding payment of Sales Tax / VAT. The learned Commissioner (Appeals) has reduced the addition to 6.5% of the purchases. Thus, from the aforesaid facts, it is evident that the dispute between the parties is only with regard to quantum of profit on the non-genuine purchases. It is noticed that the learned Commissioner (Appeals) has observed that the VAT rate on the goods purchased by the assessee is 4% and the profit margin on such purchases would be 2.5%. Thus, on the aforesaid basis, learned Commissioner (Appeals) has restricted the addition to 6.5% of the non-genuine purchases. In our view, the aforesaid conclusion drawn by the learned Commissioner (Appeals) is logical keeping in view the attending facts and circumstances of the case. Therefore, we do not find any reason to interfere with the decision of learned Commissioner (Appeals) on the issue. Ground raised is 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