



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**

**SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

ITA no.5090 & 5091/Mum./2018  
(Assessment Year : 2009-10 & 2010-11)

Prakash M. Jain  
Shop no.2, Shree Kanak Bhava  
6<sup>th</sup> Khetwadi Bank road  
Mumbai 400 004  
PAN – AABPJ4763G

..... Appellant

v/s

Income Tax Officer  
Ward-19(2)(5), Mumbai

..... Respondent

Assessee by : None  
Revenue by : Shri Bera Ram

Date of Hearing – 18.11.2019

Date of Order – 28.11.2019

**ORDER**

The aforesaid appeals by the assessee are against two separate orders, both dated 14<sup>th</sup> June 2018, passed by the learned Commissioner (Appeals)-2, Mumbai, pertaining to the assessment year 2009-10 and 2010-11.

2. Since the grounds raised in both the appeals are identical, we propose to dispose off the grounds together.

3. The first common issue in ground no.1, in both the appeals is challenging the validity of re-opening of assessment under section 147 of the Income Tax Act, 1961 (for short "*the Act*").

4. Brief facts are, the assessee, an individual, is engaged in the business of trading in ferrous and non-ferrous metals. For the assessment years under dispute, the assessee had originally filed its returns of income in regular course. The returns of income were initially processed under section 143(1) of the Act. Subsequently, the Assessing Officer received information from the office of the DGIT (Inv.) informing that as communicated by the Sales Tax Department, Government of Maharashtra, certain entities identified as hawala operators were providing accommodation bills in the garb of bogus purchase. As per the information received, the assessee is one of the beneficiaries of the accommodation entries provided by such hawala operators as identified by the Sales Tax Department. It was found that as per the information, purchases worth ₹ 65,12,118, claimed to have been made from 10 parties in the assessment year 2009-10 are non-genuine. Similarly, purchases worth ₹ 60,57,588 (wrongly mentioned as ₹ 2,84,38,886, in the assessment order but subsequently rectified in the order passed under section 154 of the Act on 17<sup>th</sup> March 2016) are non-genuine. On the basis of such information, the Assessing Officer re-opened the assessment under section 147 of the Act and

ultimately proceeded to complete them by estimating profit @ 12.5% on the non-genuine purchases. The assessee challenged the assessment orders so passed before learned Commissioner (Appeals), both, on merits as well as on the validity of re-opening of assessment under section 147 of the Act. However, learned Commissioner (Appeals) did not entertain assessee's plea on both the issues.

5. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. It is observed from the record that the hearing notice issued per registered post with A/D, has returned un-served with the postal remark "*not known*". In view of the above, we proceed to dispose of the appeals ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material on record.

6. We have considered the submissions of learned Departmental Representative and perused the material on record. As could be seen, the returns of income filed by the assessee were not subjected to scrutiny, but were only processed under section 143(1) of the Act. Therefore, the Assessing Officer never had an occasion to verify the genuineness of purchases at the time of processing of returns of income under section 143(1) of the Act. Subsequently, The Assessing Officer received specific information indicating that certain purchases

made by the assessee are non-genuine. On the basis of such information, the Assessing Officer re-opened the assessment under section 147 of the Act. Thus, there cannot be any doubt that at the time of re-opening of assessment the Assessing Officer had tangible material in his possession to form the belief that income chargeable to tax has escaped assessment. That being the case, we do not find any jurisdictional error or invalidity in the action of the Assessing Officer in re-opening the assessments under section 147 of the Act. Accordingly, ground no.1, in both the appeals is dismissed.

7. In ground no.2 in both the appeals, the assessee has challenged the addition made @ 12.5% of the non-genuine purchases.

8. The factual matrix reveals that the Assessing Officer had specific information from external source indicating that certain purchases made by the assessee were non-genuine and the assessee is merely a beneficiary of accommodation entries provided by certain entities. In the garb of purchase bills. In the course of assessment proceedings, the Assessing Officer had not only called upon the assessee to prove the genuineness of purchases, but he himself conducted independent enquiry to find out the authenticity of purchases made by the assessee. Neither the assessee was able to convince the Assessing Officer with supporting evidences regarding the genuineness of

purchases made nor the independent enquiry conducted by the Assessing Officer elicited any information regarding the genuineness of purchases claimed to have been made by the assessee, as, the concerned selling dealers were not found in the given address. Therefore, the purchases claimed to have been made by the assessee cannot be accepted as genuine without proper corroborative evidence. In such circumstances, instead of adding the entire purchases the Assessing Officer has restricted the addition to 12.5% of such purchases which has been confirmed by learned Commissioner (Appeals). The assessee has neither appeared before us nor has brought any convincing material to enable us to restrict the addition to a lesser percentage. In view of the aforesaid, we are unable to entertain the grounds raised by the assessee.

9. In the result, assessee's appeals are dismissed.

Order pronounced in the open Court on 28.11.2019

**Sd/-**  
**N.K. PRADHAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 28.11.2019**

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