



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.6009/Mum./2018
(Assessment Year : 2010-11)

Income Tax Officer
Ward-31(2)(1), Mumbai

..... Appellant

v/s

Shri Jitendra S. Mamanian
1309-A, Agarwal Industries
S.V. Road, Jogeshwari (West)
Mumbai 400 102 PAN : ADDPM0623P

..... Respondent

C.O. no.232/Mum./2019
(Arising out of ITA no.6009/Mum./2018)
(Assessment Year : 2010-11)

Income Tax Officer
Ward-31(2)(1), Mumbai

..... Appellant

v/s

Shri Jitendra S. Mamanian
1309-A, Agarwal Industries
S.V. Road, Jogeshwari (West)
Mumbai 400 102 PAN : ADDPM0623P

..... Respondent

Assessee by : Ms. Lajari K. Oswal
Revenue by : Smt. Jyothi Lakshmi Nayak

Date of Hearing - 26.11.2019

Date of Order - 19.12.2019

ORDER**PER SAKTIJIT DEY, J.M.**

The aforesaid appeal by the Revenue and cross objection by the assessee are against the order dated 12th July 2018, passed by learned Commissioner of Income Tax (Appeals)-42, Mumbai, pertaining to the assessment year 2010-11.

2. The only common dispute in the appeal and the cross objection is with regard to the part disallowance sustained by learned Commissioner (Appeals).

3. Brief facts are, the assessee, an individual, is engaged in the business of manufacturing and trading of gift articles through his proprietorship concern Roundline Industries. For the assessment year under consideration, the assessee filed his return of income on 22nd September 2010 declaring total income of ₹ 10,76,820. During the assessment proceedings, the Assessing Officer, to verify the genuineness of purchases shown by the assessee, issued notices under section 133(6) of the Act to selected parties from whom the assessee claimed to have made purchases. On the basis of such enquiry, he found that purchases worth ₹ 11,01,170, claimed to have been made from three parties are doubtful as the concerned selling dealers appeared in the list of suspicious dealers issued by the Sales Tax

Department. According to the information received, these entities were only providing false bills without actual sale transaction. Thus, he called upon the assessee to prove the genuineness of purchases. As observed by the Assessing Officer, the assessee was unable to furnish any clinching evidence to fully prove the genuineness of purchases made from these parties. Accordingly, he treated the purchases worth ₹ 11,01,170, as non-genuine and added back to the income of the assessee. While deciding assessee's appeal disputing such addition, learned Commissioner (Appeals) restricted the addition to 25% of the non-genuine purchases.

4. The learned Departmental Representative submitted, since the assessee has failed to prove the purchases through proper supporting evidences, 100% addition made by the Assessing Officer was justified.

5. On the other hand, learned Authorised Representative submitted, while deciding identical issue in assessee's own case for the assessment year 2009-10, the Tribunal has restricted the addition to 12.5% of the non-genuine purchases. Thus, she submitted, the disallowance should be restricted to 12.5%.

6. We have considered rival submissions and perused the material on record. No doubt, the assessee was unable to prove the source of purchases made through proper documentary evidences. However, the

sales effected by the assessee have not been doubted. Therefore, learned Commissioner (Appeals) was justified in interfering with 100% addition made by the Assessing Officer. However, the disallowance on account of non-genuine purchases @ 25% by learned Commissioner (Appeals) is on a much higher side. Notably, while deciding identical nature of dispute in assessee's own case for the assessment year 2009-10 in ITA no.1380/Mum./2018, dated 4th October 2019, the Tribunal has restricted the addition to 12.5% of the non-genuine purchases. Facts being similar, respectfully following the aforesaid decision of the Co-ordinate Bench, we restrict the addition to 12.5% of the non-genuine purchases.

7. In the result, Revenue's appeal is dismissed and assessee's cross objection is partly allowed.

Order pronounced in the open Court on 19.12.2019

Sd/-
N.K.PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 19.12.2019

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