



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRIS. RIFAUH RAHMAN, ACCOUNTANT MEMBER

ITA no.6062/Mum./2018
(Assessment Year : 2010-11)

Asstt. Commissioner of Income Tax
Circle-25(3), Mumbai

..... Appellant

v/s

P.B. Construction Company
B-7, Kadamgiri CHS
Hanuman Road, Vile Parle (E)
Mumbai 400 049
PAN - AACFP2842B

..... Respondent

Assessee by : None
Revenue by : Shri Kumar Padmapani Bora

Date of Hearing - 18.12.2019

Date of Order - 30.12.2019

ORDER

PER SAKTIJIT DEY. J.M.

The aforesaid appeal has been filed by the Revenue challenging the order dated 2nd August 2018, passed by the learned Commissioner OF Income Tax (Appeals)-37, Mumbai, for the assessment year 2010-11.

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. Even, there is no

application by the assessee seeking adjournment either. Keeping in view the aforesaid fact, 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.

3. The dispute in the aforesaid appeal is confined to part deletion of addition made on account of non-genuine purchases.

4. Brief facts are, the assessee, a partnership firm, is stated to be engaged in the business of executing civil contract work. For the assessment year under consideration, the assessee filed its return of income on 24th September 2010, declaring total income of ₹ 1,59,40,100. Subsequently, on the basis of information received from the DGIT (Inv.), Mumbai, as well as from the Sales Tax Department, Government of Maharashtra, that purchases worth ₹ 15,37,254, claimed to have been made from two parties are non-genuine, 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 purchases through supporting evidences. As alleged by the Assessing Officer, the assessee was unable to prove the genuineness of purchases through any cogent evidence. Accordingly, he held the purchases of ₹ 15,37,254, as non-genuine and disallowing the same as unexplained expenditure under

section 69C of the Act added back to the income of the assessee. Being aggrieved, the assessee challenged the aforesaid addition before the first appellate authority.

5. After considering the submissions of the assessee and relying upon the decision of the Hon'ble Gujarat High Court in CIT v/s Simit P. Sheth, [2013] 356 ITR 451 (Guj.), learned Commissioner (Appeals) restricted the addition to 12.5% of the non-genuine purchases.

6. We have considered the submissions of learned Departmental Representative and perused the material on record. No doubt, from the materials on record, it is evident that the assessee could not furnish sufficient documentary evidence to conclusively prove the source of disputed purchases. However, the fact that the assessee has executed contract work during the year by utilizing material purchased is borne out from record as the assessee has shown income of more than ₹ 1.5 crore from its business activity. Therefore, the fact of purchases of material and utilization in contract work stands proved. The dispute is only with regard to source of purchases. In such situation, it can be assumed that the assessee might have purchased such material from grey market and regularized such purchases by obtaining accommodation bills. That being the case, the addition of profit element embedded in such purchases has to be made. As could be seen, learned Commissioner (Appeals) has estimated such profit

element @ 12.5% and restricted the addition to that extent. In our considered opinion, the aforesaid decision of learned Commissioner (Appeals) being just and proper does not require any interference from us. Grounds raised are dismissed.

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

Order pronounced in the open Court on 30.12.2019

Sd/-
S. RIFAUH RAHMAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 30.12.2019

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