



IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRIS. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA no.6831 & 6832/Mum./2018
(Assessment Year : 2010-11 & 2009-10)

Income Tax Officer
Ward-27(2)(5), Mumbai

..... Appellant

v/s

Piyush D. Gada
Flat no.502, Anita Kutir CHS Ltd.
90, Feet Road, Ghatkopar (E)
Mumbai 400 075
PAN - ABRPG2822J

..... Respondent

Revenue by : Shri Kumar Padmapani Bora
Assessee by : None

Date of Hearing - 18.12.2019

Date of Order - 30.12.2019

ORDER

PER SAKTIJIT DEY. J.M.

The captioned appeals have been filed by the Revenue challenging two separate orders, both dated 12th September 2018, passed by the learned Commissioner of Income Tax (Appeals)-25, Mumbai, for the assessment years 2009-10 and 2010-11.

2. The only common dispute in both the appeals is concerning the decision of learned Commissioner (Appeals) in restricting the addition on account of non-genuine purchases to 12.5%.

3. 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 filed by the assessee seeking adjournment either. Keeping in view the aforesaid facts, 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 manufacture and sale of corrugated boxes. For the assessment years under dispute, the assessee filed its return of income under section 139(1) of the Act in the regular course. The returns of income filed were initially processed under section 143(1) of the Act. Subsequently, the Assessing Officer received information from the DGIT (Inv.), Mumbai, as well as from the Sales Tax Department, Government of Maharashtra, that purchases worth ₹ 45,79,663, in the assessment year 2010-11 and ₹ 36,19,306 in the assessment year 2009-10, are non-genuine as the parties from whom the assessee claimed to have made such purchases have been identified as hawala operators by the Sales Tax Department, Government of Maharashtra. On the basis of such information, 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. Further, the Assessing Officer, to

independently verify the genuineness of purchases, issued notice under section 133(6) of the Act to the selling dealer. Since, the notice issued returned back unserved, the Assessing Officer called upon the assessee to furnish the latest address of the selling dealer. In response to the fresh notice issued under section 133(6) of the Act, the concerned selling dealers appeared before the Assessing Officer and furnished various details to support the sales made by them to the assessee. However, the Assessing Officer did not accept the evidences furnished by the selling dealers and proceeded to disallow 12.5% of the disputed purchases in both the assessment years. The assessee challenged the additions made by filing appeals before the first appellate authority.

5. The learned Commissioner (Appeals) after considering the submissions of the assessee in the context of facts and material on record having found that the selling dealers have appeared before the Assessing Officer and confirmed the sales effected by them, the purchases made by the assessee cannot be held as bogus. Accordingly, he deleted the additions made by the Assessing Officer in both the assessment years.

6. We have considered the submissions of learned Departmental Representative and perused the material on record. No doubt, the

Assessing Officer has re-opened the assessment on the basis of information received from the Sales Tax Department that certain purchases made by the assessee during the years under consideration are non-genuine. However, as could be seen from the facts on record, in the course of assessment proceedings the concerned selling dealers not only responded to the notice issued under section 133(6) of the Act by the Assessing Officer but have furnished the following details:-

- i) Ledger account of the assessee in their books;*
- ii) Extract of Bank statement highlighting specific transaction with the assessee;*
- iii) Sales bill copy and delivery challan;*
- iv) Sales Tax challan and return; and*
- v) Income Tax return with all annexures.*

7. Thus, from the aforesaid documentary evidences furnished by the selling dealers, it is evident that the goods were not only sold but were delivered to the assessee. Merely because in the case of selling dealers, a part of their purchases were disallowed, it cannot be presumed that the sales made by them to the assessee are also non-genuine. The very fact that in case of selling dealers disallowances have been made @ 12.5% demonstrate that they have actually purchased the goods for resale to the assessee. That being the case, the source of purchases in assessee's hand stand proved. In the

aforesaid factual position, we do not find any infirmity in the order of learned Commissioner (Appeals) in deleting the addition made by the Assessing Officer. Accordingly, grounds raised are dismissed.

8. In the result, appeals are 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