



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA no.24/Mum./2019
(Assessment Year : 2011-12)

Income Tax Officer
Ward-19(3)(2), Mumbai

..... Appellant

v/s

Sanko Stainless Steel
Shop no.2, Haji Kasam Building
2nd Khetwadi Back Road
Mumbai 400 004 PAN-AAYFS9841H

..... Respondent

Revenue by : Shri R. Bhoopathi
Assessee by : Ms. Bhumika

Date of Hearing - 09.01.2020

Date of Order - 17.01.2020

ORDER

PER SAKTIJIT DEY. J.M.

The captioned appeal has been filed by the Revenue challenging the order dated 31st October 2018, passed by the learned Commissioner of Income Tax (Appeals)-52, Mumbai, pertaining to the assessment year 2011-12.

2. The grievance of the Revenue in the present appeal is with regard to the partial reduction of the addition made on account of non-genuine purchases.

3. Brief facts are, the assessee, a partnership firm, is engaged in the business of trading in metal items. For the assessment year under dispute, the assessee filed its return of income on 24th September 2011 declaring total income of ₹ 62,846. Subsequently, on the basis of information received from the Sales Tax Department, Government of Maharashtra, through the office of the DGIT (Inv.), Mumbai, that the assessee is a beneficiary of accommodation bills provided by certain suspicious dealers, 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 worth ₹ 30,79,448, claimed to have been made during the year from three parties. In response to the query raised by the Assessing Officer, the assessee furnished certain documentary evidences which were not to the satisfaction of the Assessing Officer. Further, to independently verify the genuineness of purchases, the Assessing Officer issued notices under section 133(6) of the Act. However, as alleged by the Assessing Officer, all such notices returned back un-served. In view of the aforesaid, the Assessing Officer held that the purchases claimed to have been made are not genuine and in reality, the assessee has purchased such goods from grey market and to regularize such purchases has obtained accommodation bills. Accordingly, after rejecting the books of account of the assessee under section 145(3) of

the Act, the Assessing Officer estimated the profit element embedded in the alleged non-genuine purchases @ 12.5% and added back an amount of ₹ 3,84,936. The assessee challenged the aforesaid addition before the first appellate authority.

4. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) directed the Assessing Officer to allow set-off of gross profit already shown by the assessee against the profit element of 12.5%.

5. We have considered rival submissions and perused the material on record. It is evident, in the course of the assessment proceedings, the assessee had furnished various documentary evidences, such as, purchase bills, ledger account copy, bank statement, stock statement with quantitative details of purchase and corresponding sales, sale bills, etc. The Assessing Officer treated the purchases as non-genuine primarily for the reason that the assessee could not furnish any delivery challan and transportation receipt. Further, notices issued under section 133(6) of the Act returned back un-served. However, the Assessing Officer has accepted that the disputed purchases have been made by the assessee, though, not from the declared source. For this reason alone, the Assessing Officer has added only the profit element embedded in such purchases. Whereas, learned

Commissioner (Appeals) has directed the Assessing Officer to set-off the gross profit already declared against the profit estimated. In our view, the aforesaid decision of learned Commissioner (Appeals) is just and proper, hence, does not require interference. Since, the assessee has already included the purchases in its accounts and offered the profit derived there from in normal course, it has to be given set-off of such profit declared against the profit estimated on the alleged non-genuine purchases. Accordingly, we uphold the decision of learned Commissioner (Appeals). Grounds raised are dismissed.

6. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open Court on 17.01.2020

Sd/-
RAJESH KUMAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 17.01.2020

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