



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

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

ITA no.26/Mum./2019
(Assessment Year : 2009-10)

Income Tax Officer
Ward-17(1)(2), Mumbai

..... Appellant

v/s

Shri Ashokbhai P. Chaudhari
91, Mapla House, 1st Floor
Modi Street, Fort, Mumbai 400 001
PAN - ACHPC5129M

..... Respondent

Revenue by : Shri R. Bhoopathi
Assessee by : None

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 9th October 2018, passed by the learned Commissioner of Income Tax (Appeals)-55, Mumbai, pertaining to the assessment year 2009-10.

2. The dispute in the present appeal is confined to the decision of learned Commissioner (Appeals) in reducing the disallowance on

account of non-genuine purchases to 8% as against 12.5% of made by the Assessing Officer.

3. Brief facts are, the assessee is an individual and is engaged in the business of trading in office and general stationery and printing items. For the assessment year under consideration, the assessee filed his return of income on 29th September 2009, declaring total income of ₹ 4,64,227. 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 entities identified by the Sales Tax Department as hawala operators, the Assessing Officer re-opened the assessment under section 147 of the Income Tax Act, 1961 (for short "*the Act*"). During the assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases of ₹ 17,37,554, claimed to have been made from various 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. The Assessing Officer, therefore, 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, he concluded that the purchases

made by the assessee are non-genuine. However, considering the facts of the case, the Assessing Officer proceeded to add the profit element embedded in such purchase by estimating @ 12.5%. Accordingly, he made addition of ₹ 2,17,194. The assessee challenged the aforesaid addition before the first appellate authority.

4. After considering the submissions of the assessee, learned Commissioner (Appeals) restricted the addition to 8% of the non-genuine purchases.

5. When the appeal was called for hearing, neither the assessee nor any one was present on behalf of the assessee to represent the case. Even, there is no application filed by the assessee seeking adjournment. In such circumstances, we consider it appropriate to dispose of the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

6. We have heard the learned Departmental Representative and perused the material on record. Though, it may be a fact that the Assessing Officer was not satisfied with the evidences furnished by the assessee to prove the disputed purchases, however, he has accepted that the purchases were made by the assessee from unknown sources. For these reasons alone, he has not added the entire purchases, but

restricted the addition to the profit element being estimated at 12.5%, which has been reduced to 8% by the learned Commissioner (Appeals). After considering the nature of business carried on by the assessee and over all facts and circumstances of the case, we are of the view that the decision of the learned Commissioner (Appeals) in restricting the disallowance to 8% of the non-genuine purchases is reasonable, hence, needs no interference.

7. 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