



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

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

ITA no.6279/Mum./2018  
(Assessment Year : 2010-11)

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

..... Appellant

v/s

Shri Mintu Sayermal Jain  
435, Pathe Bapurao Marg  
Opp. Islampura Street  
Somi Building, Mumbai 400 004  
PAN – ADCPJ3983C

..... Respondent

Revenue by : Smt. Jothilakshmi Nayak  
Assessee by : None

Date of Hearing – 08.01.2020

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 17<sup>th</sup> August 2018, passed by the learned Commissioner of Income Tax (Appeals)-53, Mumbai, pertaining to the assessment year 2010-11.

2. Brief facts are, the assessee, an individual, is engaged in the business of trading in ferrous and non-ferrous metal. For the assessment year under dispute the assessee filed its return of income

on 15<sup>th</sup> October 2010, declaring income of ₹ 5,02,670. The return of income filed by the assessee was initially processed under section 143(1) of the Income Tax Act, 1961 (for short "*the Act*"). Subsequently, on the basis of information received from the Sales Tax Department, Government of Maharashtra, through the office of the DGIT (Inv.), Mumbai, revealing that the assessee is a beneficiary of accommodation bills provided by hawala operators, 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 amounting to ₹ 21,92,894, claimed to have been made during the year from five parties. In response to the query raised by the Assessing Officer, the husband of the assessee appeared from time-to-time. As alleged by the Assessing Officer, the assessee failed to furnish the required details called for. Thus, ultimately, the Assessing Officer proceeded to complete the assessment by treating the purchases worth ₹ 21,92,894, as non-genuine. However, relying upon the decision of the Hon'ble Gujarat High Court in Simit P. Sheth, [2013] 356 ITR 451 (Guj.), he restricted the addition to 12.5% of the non-genuine purchases. The assessee challenged the aforesaid addition before the first appellate authority.

3. Before learned Commissioner (Appeals), the assessee specifically pleaded that during the year under consideration, she has not made any purchases from the concerned parties. To support such contention, the assessee furnished the extract of purchase register. On the basis of submissions made by the assessee and evidences furnished, learned Commissioner (Appeals) directed the Assessing Officer to verify assessee's claim and furnish his report. As observed by learned Commissioner (Appeals), the Assessing Officer did not furnish any report on the submissions made and evidences filed by the assessee. Thus, accepting assessee's claim that she has not effected the disputed purchases during the year, learned Commissioner (Appeals) deleted the addition of ₹ 2,74,112.

4. When the appeal was called for hearing, neither the assessee nor any one was present on behalf of the assessee to represent the case despite service of notice. Even, there is no application filed by the assessee seeking adjournment of hearing. 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.

5. The learned Departmental Representative submitted, before the Assessing Officer the assessee did not produce any evidences for which the Assessing Officer proceeded to complete the assessment to

the best of his judgment and added back 12.5% of the non-genuine purchases. She submitted, for the first time the assessee made a claim before learned Commissioner (Appeals) that she has not made the purchases during the year. Merely because the Assessing Officer did not offer his comment on the submissions made by the assessee, learned Commissioner (Appeals) without making any enquiry himself has deleted the addition, which is improper.

6. We have heard the learned Departmental Representative and perused the material on record. It is evident, though, the Assessing Officer has treated the purchases as non-genuine, however, ultimately he has restricted the addition to 12.5% of such purchases. It is also evident, during the assessment proceedings, as per the Assessing Officer's own admission, the husband of the assessee had appeared from time-to-time. Be that as it may, in the course of proceedings before learned Commissioner (Appeals), the assessee had specifically pleaded that during the year under consideration, she had not made the disputed purchases from the concerned parties and to support such pleading, the assessee had also furnished the extracts of purchase register. It is further evident, the submissions made by the assessee and evidences filed were forwarded to the Assessing Officer for verification and examination of assessee's claim. As observed by learned Commissioner (Appeals), the Assessing Officer did not furnish

any report either accepting or refuting assessee's claim. In the absence of any adverse report of the Assessing Officer, learned Commissioner (Appeals) ultimately deleted the addition made by the Assessing Officer. In our view, when the assessee has claimed that she has not made any purchases from the concerned parties during the year under consideration, such claim has to be verified by the Assessing Officer. In fact, learned Commissioner (Appeals) had also directed the Assessing Officer to verify assessee's claim. However, the Assessing Officer has chosen to remain silent on assessee's claim. In such circumstances, in the absence of any adverse report from the Assessing Officer, the claim of the assessee that she had not effected the disputed purchases from the concerned parties has to be accepted. That being the case, we do not find any infirmity in the decision of learned Commissioner (Appeals) on the issue. Accordingly, grounds are dismissed.

7. In the result, 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