

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

**BEFORE SHRI SAKTIJIT DEY, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.6448/Mum/2018
(Assessment Year :2009-10)**

ITO-28(1)(3) Room No.327, 3 rd Floor Tower No.6, Vashi Railway Station Complex, Vashi Navi Mumbai – 400 703	Vs.	Shri Dashrath Amrit Singh A-701, Sai Krupa CHS Plot No.100, Sector-27 Nerul, Navi Mumbai - 400706
PAN/GIR No.AABPS7512E		
(Appellant)	..	(Respondent)

Revenue by	Shri Kamal Mangal
Assessee by	Shri M. Subramanian
Date of Hearing	13/01/2020
Date of Pronouncement	15/01/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.6448/Mum/2018 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-26, Mumbai in appeal No.CIT(A)-26/IT-09/2014-15 dated 24/08/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/09/2014 by the Id. Income Tax Officer – 22(3)(1), Mumbai (hereinafter referred to as Id. AO).

2. The only issue raised by the revenue in this appeal is as to whether the Id. CIT(A) was justified in directing the Id. AO to restrict the addition

made towards gross profit of 23% of bogus purchases as against 100% of such purchases made by the Id. AO in the facts and circumstances of the instant case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is an individual engaged in manufacturing and resale of building materials and had filed his return of income for the A.Y.2009-10 on 29/09/2009 declaring income of Rs.5,52,120/-. The business of the assessee is being run in the name of M/s. Tirma Stone, the proprietor concern of the assessee. The assessee had disclosed income from business and income from other sources in his return of income. We find that the Id. AO observed that assessee had made purchases from M/s. R.K. Traders for Rs.1,07,598/- whose name appeared in the website of Maharashtra Sales Tax Department to be a tainted party and the said party was said to be engaged in providing accommodation bills. Since the assessee had made purchases from such tainted party and based on the information provided by the Sales Tax department of Maharashtra to the Income Tax department, the assessment for the Asst Year 2009-10 was reopened by the Id. AO. It is not in dispute that the assessee had actually consumed in his business the goods that were mentioned in the invoice of M/s. RK Traders, hence, what is to be brought to tax is only the profit element embedded in such purchases. We find that the Id. AO had taxed the entire value of purchases in the assessment as bogus in the sum of Rs.1,07,598/- as unexplained expenditure u/s.69C of the Act. We hold that no addition could be made in respect of bogus purchases u/s 69C of the Act as the basic pre-requisite for invoking the provisions of section 69C of the Act is that an expenditure should have been actually incurred but the same could not be explained by proper source. In the instant case, the Id AO

had alleged that the entire transaction of purchase from M/s R.K. Traders is bogus and non-genuine. We find that the Id. CIT(A) had considered the gross profit declared by the assessee during the year at 22.05% and accordingly, estimated the addition to restrict the gross profit percentage of 23% on value of alleged purchases. Against this action of the Id. CIT(A), assessee has not preferred any appeal before us. Hence our observations made in the context of non-applicability of provisions of section 69C of the Act in the instant case would be of academic importance only. We find that this Tribunal has been holding consistently in respect of the industry in which assessee is engaged in that the adoption of profit of 12.5% would be just and reasonable. Since the assessee has not preferred any appeal before this Tribunal against the action of the Id. CIT(A), the adoption of gross profit at 23% by the Id. CIT(A) is much more than the profit percentage adopted by this Tribunal in several cases at 12.5%. In view of these peculiar circumstances, the order of the Id. CIT(A) does not warrant any interference. Accordingly, the grounds raised by the revenue are dismissed.

4. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this 15/01/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Mumbai; Dated
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

15/01/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai