

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

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

I.T.A. Nos. 6312/Mum/2018
Assessment Years : 2011-12

ITO 27(1)(4) Tower No. 6, 4 th Floor, Room No. 409, Vashi Rly Stn Complex, Vashi, Navi Mumbai.	बनाम/ Vs.	Md. Ismail Shaikh, Cen – 113, Shashtri Nagar, Bainganwadi, Govandi, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BAVPS2697K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Smt. Jothilakshmi Nayak
प्रत्यर्थी की ओर से/Respondent by :	None

सुनवाई की तारीख / Date of Hearing	09.01.2020
घोषणा की तारीख/Date of Pronouncement	.01.2020

आदेश / ORDER

PER SAKTIJIT DEY, JM:

1. This is an appeal by the Revenue against order dated 16.08.2018 of learned Commissioner of Income Tax (Appeals)-25, Mumbai, for the Assessment Year 2011-12. The dispute in the appeal is confined to partial relief granted by the Ld. Commissioner of Income Tax (Appeals) in the matter of addition made on account of non-genuine purchases.

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2. Briefly the facts are, the assessee is an individual and engaged in the business of manufacturing and reselling of footwear through his proprietary concern M/s. Plus Foot. For the assessment year under dispute assessee filed his return of income on 21.09.2011 declaring total income of Rs. 5,24,177/-. Subsequently, on the basis of information received from the Sales Tax Department, Govt. of Maharashtra through the Investigation Wing of the department indicating that the assessee is a beneficiary of accommodation bills provided by Remy Sales Corporation for an amount of Rs. 4,20,000/-, which is identified as a hawala operator, the Assessing Officer reopened the assessment u/s 147 of the Income Tax Act, 1961. In course of assessment proceeding the Assessing Officer called upon the assessee to prove the genuineness of the purchase worth Rs. 4,20,000/- claimed to have been made during the year from Remy Sales Corporation by furnishing supporting evidences. In response to the query raised by the Assessing Officer, though, the assessee furnished some documentary evidences to prove the purchases, however, the

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Assessing Officer was not satisfied with them. As alleged by the Assessing Officer, assessee was unable to furnish any evidence to show actual delivery of goods at his premises. Further, the Assessing Officer observed, notices issued u/s 133(6) of the Income Tax Act, 1961 to the selling dealer also returned back unserved. In view of the above, the Assessing Officer concluded that the purchases worth Rs. 4,20,000/- are non-genuine. Further, he observed, to inflate his purchases and suppress the profit the assessee has availed accommodation entries. On the basis of aforesaid reasoning the Assessing Officer added back entire amount of Rs. 4,20,000/- to the income of the assessee. Assessee contested the aforesaid addition before the first appellate authority. After considering the submissions of the assessee in the context of facts and materials on record learned Commissioner (Appeals) restricted the addition to 12.5% of the non-genuine purchases.

3. When the appeal was called for hearing no one was presented on behalf of the assessee to represent the case. Even, the assessee has not filed any

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application seeking adjournment. Considering the above, we proceed to dispose of the appeal ex-parte qua the assessee after hearing learned Departmental Representative and on the basis of material available on record.

4. Heard learned Departmental Representative and perused material on record. It is evident, though, the Assessing Officer on the basis of his own reasoning has held the purchases worth of Rs. 4,20,000/- as non-genuine and has added back to the income of the assessee. However, he has not disputed the sales effected by the assessee. It is common knowledge, in absence of the purchases (raw material) the assessee could not have effected the sales. Thus, it has to be assumed that the assessee must have purchased the goods from un-declared sources and to regularize such purchases has availed accommodation bills. Considering the aforesaid aspect, learned Commissioner (Appeals) has held that in such circumstances the entire purchases cannot be disallowed but the disallowance can be restricted to the profit element embedded in such purchases.

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Accordingly, he has restricted the disallowance to 12.5% of the alleged non-genuine purchases. In our view, the aforesaid decision of learned Commissioner (Appeals) is most reasonable and appropriate keeping in view the relevant facts available on record. Accordingly, the order of learned Commissioner (Appeals) on the disputed issues is upheld by dismissing the grounds raised by the Revenue.

7. In the result, the appeal filed by the Revenue is dismissed.

This Order is pronounced in Open Court on 22.01.2020

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Mumbai, Dated 22.01.2020

KRK, PS