



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

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

ITA no.6298/Mum./2018
(Assessment Year : 2011-12)

Income Tax Officer
Ward-17(3)(1), Mumbai

..... Appellant

v/s

Late Shri Rajesh S. Mehta
Through Legal Heir Ms. Mansi P. Mehta
Somji Building, 198, North Brook Street
Mumbai 400 003 PAN – AIGPM4374H

..... Respondent

Revenue by : Smt. Jothilakshmi Nayak
Assessee by : None

Date of Hearing – 09.01.2020

Date of Order – 05.02.2020

ORDER

PER SAKTIJIT DEY. J.M.

This is an appeal by the Revenue against the order dated 6th August 2018, passed by the learned Commissioner of Income Tax (Appeals)-28, Mumbai, pertaining to the assessment year 2011-12.

2. The dispute in the present appeal is confined to the decision of learned Commissioner (Appeals) in restricting the addition on account of non-genuine purchases to 3% of such purchases as against the disallowance of 5% made by the Assessing Officer.

3. Brief facts are, the assessee, since deceased, was carrying on business of trading in iron & steel. For the assessment year under dispute, the assessee had filed his return of income on 17th September 2011, declaring total income of ₹ 2,80,350. Subsequently, on the basis of information received from the Sales Tax Department, Government of Maharashtra, through the office of the DGIT (Inv.), Mumbai, the Assessing Officer found that purchases worth ₹ 2,59,01,731, claimed to have been made during the year from certain entities are non-genuine. Accordingly, he re-opened the assessment under section 147 of the Act. During the assessment proceedings, the Assessing Officer called upon the assessee's legal heir to furnish documentary evidence to prove the purchases. As observed by the Assessing Officer, the assessee's representative furnished ledger account of selling dealers, purchase bills, payment details through banking channel, etc. However, the Assessing Officer was not convinced with the documentary evidences filed by the assessee and ultimately concluded that the purchases are non-genuine. However, considering the fact that the assessee has entered the purchases in his books of account and corresponding sales have been made, he estimated the profit element embedded in such non-genuine purchases @ 5% and added back an amount of ₹ 12,95,087. Being aggrieved with such addition, the assessee preferred appeal before the first appellate authority.

4. After considering the submissions of the assessee, learned Commissioner (Appeals) restricted the addition to 3% of the non-genuine purchases.

5. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. There is no application by the assessee seeking adjournment either. Therefore, we proceed to dispose off 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, the Assessing Officer has treated the purchases to be non-genuine, however, ultimately he has restricted the addition on account of such non-genuine purchases to the profit element embedded therein by estimating it at 5%. Whereas, learned Commissioner (Appeals) has reduced the profit rate to 3%. Thus, as could be seen, the dispute in the present appeal is with regard to the appropriate profit rate which can be considered for addition. After considering the nature of business carried on by the assessee and other relevant facts, we are of the considered opinion that learned Commissioner (Appeals) was justified in restricting the addition to 3% of the non-genuine purchases. Accordingly, upholding

the order of learned Commissioner (Appeals), we dismiss the grounds raised by the Revenue.

7. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 05.02.2020

**Sd/-
RAJESH KUMAR
ACCOUNTANT MEMBER**

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 05.02.2020

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