



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA no.532/Mum./2019
(Assessment Year : 2010-11)

Income Tax Officer
Ward-32(3)(1), Mumbai

..... Appellant

v/s

Pooja Rajesh Dhruv
L/H Late Shri Rajesh R. Dhruv
A-204, Prem Apartments
Sai Baba Nagar, Borivali (W)
Mumbai 400 092 PAN-ADNPD5749F

..... Respondent

Revenue by : Shri Saurabh Deshpande
Assessee by : None

Date of Hearing - 03.02.2020

Date of Order - 04.03.2020

ORDER

PER SAKTIJIT DEY. J.M.

The captioned appeal has been filed by the Revenue challenging the order dated 10th October 2018, passed by the learned Commissioner of Income Tax (Appeals)-45, Mumbai, pertaining to the assessment year 2010-11.

2. The dispute in the present appeal is confined to partial relief granted by the learned Commissioner (Appeals) in the matter of addition made on account of non-genuine purchases.

3. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. There is no application seeking adjournment either. Accordingly, 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.

4. Brief facts are, the assessee, an individual, is engaged in the business of trading in chemicals, solvents, dyes and intermediates as well as other allied items. For the assessment year under dispute, the assessee filed her return of income on 15th October 2010, declaring total income of ₹ 7,99,350. 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, that the assessee is a beneficiary of accommodation bills provided in relation to purchases worth ₹ 7,40,402, claimed to have been made during the year from four parties, the Assessing Officer re-opened the assessment under section 147 of the Act. During the assessment proceedings, the Assessing Officer called upon the assessee to prove

the genuineness of purchases made. Further, to independently verify the purchases, the Assessing Officer issued notices under section 133(6) of the Act to the selling dealers, which, as alleged by the Assessing Officer, returned back un-served with the postal remark "left". Further, the assessee was also unable to produce the concerned parties before the Assessing Officer. In view of the aforesaid, the Assessing Officer concluded that purchases worth ₹ 7,40,402, are non-genuine and accordingly treating such purchases as unexplained expenditure under section 69C of the Act, he added back to the income of the assessee. The assessee disputed the aforesaid addition in appeal preferred before the first appellate authority.

5. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) restricted the disallowance to 12.5% of the alleged non-genuine purchases.

6. We have considered the submissions of the learned Departmental Representative and perused the material on record. It may be a fact that the evidences furnished by the assessee during the assessment proceedings could not satisfy the Assessing Officer regarding the genuineness of the purchases, for which, he treated such purchases as non-genuine and added back to the income of the assessee. However,

it is also evident, the Assessing Officer has not disputed the sales effected by the assessee. That being the case, a presumption has to be drawn that in the absence of such purchases the assessee could not have effected the sales. Therefore, it has to be concluded that the assessee had purchased the goods from unverified sources and to regularize such purchases has availed accommodation bills. In such circumstances, only the profit element embedded in such purchases can be considered for addition. Therefore, in our view, the learned Commissioner (Appeals) was justified in restricting the addition to the profit element in such purchases. Further, the rate of 12.5% adopted by the learned Commissioner (Appeals) is not only just and reasonable, but also in consonance with the consistent view expressed by the Tribunal in similar nature of cases. In view of the aforesaid, we uphold the decision of learned Commissioner (Appeals) by dismissing the grounds raised by the Revenue.

7. In the result, appeal stands dismissed.

Order pronounced in the open Court on 04.03.2020

Sd/-
G. MANJUNATHA
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 04.03.2020

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