



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

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

ITA no.571/Mum./2019
(Assessment Year : 2009-10)

Income Tax Officer
Ward-17(2)(4), Mumbai

..... Appellant

v/s

Shri Narendra Manganlal Mehta
402, Steel Centre
S.T. Road, Mumbai 400 009
PAN – AGZPM4547P

..... 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 12th November 2018, passed by the learned Commissioner of Income Tax (Appeals)-58, Mumbai, pertaining to the assessment year 2009-10.

2. The dispute in the present appeal is confined to the decision of learned Commissioner (Appeals) in restricting the disallowance on

account of non-genuine purchases to 12.5% as against the full addition made by the Assessing Officer.

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 is an individual. For the assessment year under dispute, the assessee filed his return of income on 28th September 2009, declaring income of ₹ 9,88,430. The return of income filed by the assessee was initially processed under section 143(1) of the Act. Subsequently, on the basis of information received from Sales Tax Department through the office of the DGIT (Inv.), Mumbai, that purchases worth ₹ 2,33,714, claimed to have been made during the year from Shri Sai Trading Co. is non genuine, as, the concerned party has been identified as a hawala operator providing accommodation bills, the Assessing Officer re-opened the assessment under section 147 of the Act. In the course of assessment proceedings, the Assessing Officer issued statutory notices along with questionnaire requiring the assessee to furnish necessary details to prove the purchases. However, as alleged by the Assessing Officer, the assessee

did neither complied even to a single notice issued by the Assessing Officer nor he appeared in the assessment proceedings,. Thus, the Assessing Officer proceeded to complete the assessment under section 144 of the Act to the best of his judgment. On the basis of material available on record, the Assessing Officer ultimately concluded that the purchases worth ₹ 2,33,714 are non-genuine and accordingly added back to the income of the assessee. The assessee contested the aforesaid addition before the first appellate authority. However, before learned Commissioner (Appeals) also, the assessee did not appear in person, but made his submissions through e-mail. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) restricted the addition to 12.5% of the non-genuine purchases.

5. We have considered the submissions of learned Departmental Representative and perused the material on record. No doubt, in the course of assessment proceedings the assessee has neither appeared nor furnished any evidence to prove the genuineness of purchases made from the declared source. However, the Assessing Officer has not doubted the sales effected by the assessee. That being the case, the entire purchases cannot be disallowed and added back to the income of the assessee, but only the profit element embedded in such purchases can be considered for addition. In the aforesaid view of the

matter, we are in agreement with the learned Commissioner (Appeals) in restricting the addition to 12.5% of the non-genuine purchases. Accordingly, we uphold the order of learned Commissioner (Appeals) by dismissing the ground raised by the Revenue.

6. 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