



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

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

ITA no.587/Mum./2019
(Assessment Year : 2013-14)

Dy. Commissioner of Income Tax
Circle-33(3), Mumbai

..... Appellant

v/s

M/s. Shraddha Developers
Jigar P. Vora, Bharat Villa
Bogilal Fadia Road
Kandivali (W), Mumbai 400 067
PAN - AAPFS0041N

..... Respondent

Assessee by : Shri Ravindra Poojary
Revenue by : Shri Saurabh Deshpande

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 29th October 2018, passed by the learned Commissioner of Income Tax (Appeals)-45, Mumbai, pertaining to the assessment year 2013-14.

2. The dispute in the present appeal is confined to partial relief granted to the assessee in the matter of addition made on account of non-genuine purchases.

3. Brief facts are, the assessee, a partnership firm, is engaged in the business of builder and developer. For the assessment year under dispute, the assessee filed its return of income on 27th September 2013, declaring loss of ₹ 16,15,022. In the course of assessment proceedings, the Assessing Officer on the basis of information received from the Sales Tax Department, Government of Maharashtra, called upon the assessee to prove the purchases worth ₹ 23,16,976, claimed to have been made during the year from three parties. As observed by the Assessing Officer, in response to the query raised, the assessee filed various details and also made submissions in support of the purchases made. The Assessing Officer, however, was not convinced either with the submissions made by the assessee or the details furnished. He observed, despite ample opportunity being given, the assessee failed to produce the concerned parties. Further, he observed, the concerned selling dealers have already admitted before the Sales Tax Authorities that they are providing accommodation bills. He also observed that notices issued under section 133(6) of the Act to the concerned selling dealers returned back un-served. He observed, the assessee also failed to furnish delivery challan. Thus, on the basis of the aforesaid facts, the Assessing Officer ultimately treated the purchases worth ₹ 23,16,976, as non-genuine and added back to the

income of the assessee. The assessee challenged the aforesaid addition before the first appellate authority.

4. 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 alleged non-genuine purchases.

5. We have considered rival submissions and perused the material on record. It is evident, in the course of assessment proceedings, as per the Assessing Officer's own admission, the assessee furnished various details to prove the genuineness of purchases. Further, the Assessing Officer has not doubted or disputed the sales turnover of the assessee. Therefore, the logical conclusion would be, in the absence of corresponding purchase, the assessee could not have effected the sales. Thus, ultimately, the dispute/doubt is only with regard to the source of purchases. Considering the aforesaid aspect, learned Commissioner (Appeals) has restricted the disallowance to 12.5% of the non-genuine purchases which can be considered as a reasonable profit element embedded in non-genuine purchases. Further, learned Commissioner (Appeals) has correctly distinguished the factual difference between the assessee's case and the case of N.K. proteins, v/s DCIT, [2017] 84 taxmann.com 195 (SC). Thus, considering all the relevant facts available on record, we are of the view that the order

passed by learned Commissioner (Appeals) in restricting the disallowance on account of non-genuine purchases @ 12.5% is fair and reasonable, hence, does not require any interference from us. Grounds are dismissed.

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