



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

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

ITA no.674/Mum./2019
(Assessment Year : 2009-10)

Income Tax Officer
Ward-27(2)(1), Mumbai

..... Appellant

v/s

Shri Kirti Hemchand Dharod
Flat no.9, A-Wing, 2nd Floor
Jai Bandhu CHS, 90 Feet Road
Ghatkopar (E), Mumbai 400 077
PAN - AAEPD6620R

..... Respondent

Revenue by : Shri Ashish Kumar
Assessee by : None

Date of Hearing - 30.01.2020

Date of Order - 13.03.2020

ORDER

PER SAKTIJIT DEY. J.M.

The present appeal has been filed by the Revenue challenging the order dated 28th November 2018, passed by the learned Commissioner of Income Tax (Appeals)-26, Mumbai, pertaining to the assessment year 2009-10.

2. When the appeals were 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

appeals ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. The dispute in the present appeal is confined to reduction of disallowance made on account of non-genuine purchases to 12.5%.

4. Brief facts are, the assessee, an individual, is engaged in the business of manufacturing readymade garments. For the assessment year under dispute the assessee filed his return of income on 10th September 2009, declaring total income of ₹5,19,269. 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 the Sales Tax Department, Government of Maharashtra, through the office of the DGIT (Inv.), Mumbai, that the assessee is a beneficiary of accommodation bills provided by certain entities identified as hawala operators, 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 purchase worth ₹ 2,76,483, claimed to have been made during the year from six parties. Further, to independently verify the genuineness of such purchases, the Assessing Officer issued notices under section 133(6) of the Act to the concerned parties. As alleged by the Assessing Officer, all such notices returned back un-

served with the remark "*left*". Further, on verification of the evidences furnished by the assessee, the Assessing Officer did not find them convincing. He observed, the assessee failed to furnish delivery challan, transportation bills, etc. to prove actual delivery of goods. Thus, ultimately, treating the purchase to be non-genuine, the Assessing Officer added back the amount of ₹ 2,76,483, to the income of the assessee. The assessee challenged the aforesaid addition before the first appellate authority.

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

6. We have considered the submissions of learned Departmental Representative and perused the material on record. The factors which influenced the Assessing Officer to disallow the purchases to be non-genuine are, the notices issued under section 133(6) of the Act returned back un-served, the assessee failed to furnish the delivery challan and transportation details, etc. However, a perusal of the assessment order makes it clear that the Assessing Officer has not disputed the consumption of raw material or sales effected by the assessee. In such circumstances, logical conclusion one can arrive at is, the assessee might have purchased the goods from some other sources. Therefore, in such circumstances, the entire purchase cannot

be disallowed, but, the profit element embedded in such purchases can be disallowed. In that view of the matter, learned Commissioner (Appeals) was justified in disallowing 12.5% of the alleged non-genuine purchases, which in our view is reasonable. Grounds raised by the Revenue are dismissed.

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

Order pronounced in the open Court on 13.03.2020

Sd/-
G. MANJUNATHA
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 13.03.2020

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