



IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC-III" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.1713/Mum./2019
(Assessment Year : 2009-10)

Income Tax Officer
Ward-28(3)(4), Mumbai

..... Appellant

v/s

Shri Vipul P. Shah
G-104, Vardhaman Nagar
Dr. R.P. Road, Mulund (West)
Mumbai 400 703 PAN-AACPS5220L

..... Respondent

Revenue by :Smt. Kavita P Kaushik
Assessee by :None

Date of Hearing - 18.06.2020

Date of Order - 22.06.2020

ORDER

The captioned appeal has been filed by the Revenue challenging the order dated 30th January 2019, passed by the learned Commissioner of Income Tax (Appeals)-26, Mumbai, pertaining to the assessment year 2009-10.

2. When the case was called for hearing, none appeared on behalf of the respondent assessee. Therefore, I proceed to dispose off the appeal ex-parte qua the respondent assessee after hearing the learned Departmental Representative and on the basis of material on record.

3. The issue raised in the present appeal relates to partial relief granted by learned Commissioner (Appeals) in respect of addition made on account of non-genuine purchases.

4. Brief facts are, the assessee is an individual and is engaged in the business of trading in bearings through his proprietorship concern Vipul Bearings.

5. For the assessment year under dispute, the assessee filed his return of income in the regular course. Subsequently, on the basis of information received from the Sales Tax authorities through the Investigation Wing of the Department indicating that the assessee is a beneficiary of accommodation entries provided by hawala operators through bogus purchase bills, the Assessing Officer re-opened the assessment under section 147 of the Income Tax Act, 1961 (for short "*the Act*"). During the assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases worth ₹9,97,934, claimed to have been made during the year from five parties. Further, to independently verify the genuineness of such purchases, the Assessing Officer issued notices under section 133(6) of the Act to the selling dealers calling for certain information. However, all such notices returned back unserved. Further, the Assessing Officer was not satisfied with the evidences furnished by the

assessee to establish the genuineness of purchases. Thus, ultimately, the Assessing Officer disallowed the entire amount of ₹ 9,97,934, and added it to the income of the assessee.

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

7. Before me, the learned Departmental Representative strongly relied upon the observations of the Assessing Officer and submitted that the assessee having failed to prove the genuineness of purchases, the entire amount representing such purchases has to be added.

8. Having considered the submissions of the learned Departmental Representative, I find that, though, the assessee may not have been able to prove the genuineness of purchases from the declared source, however, it is a fact on record that the Assessing Officer has not disputed the sales effected by the assessee. Therefore, it goes to prove that the assessee must have purchased goods from some other undisclosed source. In such circumstances, it is the settled legal position that the entire purchases cannot be disallowed, but only the profit element embedded in such purchases can be considered for addition. Therefore, keeping in view the decisions of the Tribunal in

identical nature of cases, the decision of learned Commissioner (Appeals) to restrict the disallowance to 12.5% of the non-genuine purchase is fair and reasonable requiring no interference from this forum. Accordingly, I uphold the order of learned Commissioner (Appeals) by dismissing the grounds raised by the Revenue.

9. In the result, Revenue's appeal stands dismissed.

Order pronounced through circulation in the notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

S

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 22.06.2020

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