



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.1869/Mum./2019
(Assessment Year : 2011-12)

Income Tax Officer
Ward-28(1)(1), Mumbai

..... Appellant

v/s

Shri Anil Narayan Lokre
(Prop. Anil Trading Co.)
205, Bhagtani Enclave
Behind Asian Paints
Off. LBS Marg, Bhandup (W)
Mumbai 400 703 AAPPL1426L

..... Respondent

Revenue by : Shri Avaneesh Tiwari
Assessee by : None

Date of Hearing - 10.06.2020

Date of Order - 17.06.2020

ORDER

The captioned appeal has been filed by the assessee challenging the order dated 21st January 2019, passed by the learned Commissioner of Income Tax (Appeals)-26, Mumbai, pertaining to the assessment year 2011-12.

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, an individual, is engaged in the business of transformer bushing metal parts, HP, LT and machinery. For the assessment year under dispute, the assessee filed his return of income in the regular course on 29th September 2011, declaring total income of ₹8,30,575. 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 by way of 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 ₹12,43,329, claimed to have been made during the year from ten 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. Even, the evidences furnished by the

assessee were not enough to convince the Assessing Officer regarding the genuineness of purchases. Thus, ultimately, the Assessing Officer disallowed 25% out of the alleged non-genuine purchases of ₹ 12,43,329, and accordingly, made an addition of ₹ 3,10,832. Assessee challenged the aforesaid disallowance before learned Commissioner (Appeals).

5. 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.

6. 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 addition made by the Assessing Officer was proper.

7. Having considered the submissions of 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 consumption of material or 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, as observe by learned Commissioner (Appeals), not only different High Courts, even, different Benches of the Tribunal have held that the entire purchases cannot be disallowed, but only the profit element embedded in such purchases can be considered for addition. Therefore, consistent with the view taken by the Tribunal in identical nature of cases, I uphold the decision of learned Commissioner (Appeals) to restrict the disallowance to 12.5% of the non-genuine purchases. Accordingly, the grounds raised by the Revenue are dismissed.

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

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

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 17.06.2020

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