



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.1925/Mum./2019  
(Assessment Year :2009-10)

Asstt. Commissioner of Income Tax  
Circle-27(3), Mumbai

..... Appellant

v/s

Shri Sangeet Kumar Pabra  
B-3202, Imperial Heights  
Behind Oshiwara Bus Depot  
Goregaon (West), Mumbai 400 104  
PAN - AFWPP7620Q

..... Respondent

Revenue by : Shri Avaneesh Tiwari  
Assessee by :None

Date of Hearing - 10.06.2020

Date of Order - 17.06.2020

**ORDER**

The aforesaid appeal has been filed by the Revenue challenging the order dated 18<sup>th</sup> September 2009, passed by the learned Commissioner of Income Tax (Appeals)-25, 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 by the Revenue in the present appeal relates to addition made partly sustained by the learned Commissioner (Appeals) on account of non-genuine purchases being partly sustained by learned Commissioner (Appeals).

4. Brief facts are, the assessee, an individual, is engaged in the business of works contractor. For the assessment year under dispute, the assessee filed his return of income in the regular course on 18<sup>th</sup> September 2009, declaring total income of ₹14,09,620. 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 ₹10,42,218, claimed to have been made during the year from two 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 treated the purchases worth ₹10,42,218, as non-genuine and added back to the income of the assessee. Being aggrieved with such addition, the assessee preferred appeal before the first appellate authority.

5. After considering the submissions of the assessee in the context of facts and material on record, the 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 entire amount representing such purchases has to be added.

7. 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 assessee has executed contract work during the year. Therefore, it goes to prove that the assessee must have purchased

goods from some other undisclosed source. In such circumstances, as observe by the 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, keeping in view the decision 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 considering the rate of profit arising in similar nature of business. Accordingly, I uphold the order of learned Commissioner (Appeals) by dismissing the grounds raised by the Revenue.

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.

**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED:**

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

By Order

Assistant Registrar  
ITAT, Mumbai