



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.1936/Mum./2019
(Assessment Year : 2009-10)

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

..... Appellant

v/s

Shri Kanhaiyalal S. Jain
C/o Sudarshan Jewellers
Shop no.7, Marwadi Chawl
M.G. Road, Ghatkopar (East)
Mumbai 400 077
PAN - ADAPJ0717A

..... 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 23rd 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 the learned Commissioner (Appeals) in the matter of addition made on account of non-genuine purchases.

4. Brief facts are, the assessee is an individual and deals in gold and silver ornaments. For the assessment year under dispute, the assessee filed his return of income in the regular course on 18th September 2009, declaring total income of ₹6,68,294. Subsequently, on the basis of information received from the Sales Tax authorities through 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 ₹15,97,307, claimed to have been made from two parties during the year. 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 Assessing

Officer was also not satisfied with the evidences furnished by the assessee to establish the genuineness of purchases. Thus, ultimately, the Assessing Officer treated the purchases worth ₹15,97,307, as non-genuine. However, instead of disallowing the entire purchases, he disallowed 30% and added back an amount of Rs. 4,79,192 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, 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 Assessing Officer was justified in making the disallowance at 30%.

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 sales effected by the assessee. Therefore, it goes to prove that the assessee must have purchased goods from some other

undisclosed source. For this reason also the Assessing Officer has disallowed 30% instead of the entire amount. Therefore, the dispute in the present appeal is only with regard to the percentage at which disallowance can be made. 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.

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