



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.5519/Mum./2018
(Assessment Year : 2010-11)

Shri Ramesh Auto Stores
10, Soni Chambers
Avantikabai Gokhale Street
Mumbai 400 004
PAN-AAEFR9083H

..... Appellant

v/s

Income Tax Officer
Ward-19(3)(1), Mumbai

..... Respondent

Assessee by : Ms. Dinkle Hariya
Revenue by : Ms. R. Kavitha

Date of Hearing – 19.02.2020

Date of Order – 13.03.2020

ORDER

This appeal has been filed by the assessee challenging the order dated 27th July 2018, passed by the learned Commissioner of Income Tax (Appeals)-6, Mumbai, for the assessment year 2010-11.

2. In ground no.1, the assessee has challenged the validity of re-opening of assessment under section 147 of the Income Tax Act, 1961 (for short "*the Act*").

3. In the course of hearing, learned Authorised Representative has not advanced any arguments on this ground. Accordingly, this ground is treated as not pressed, hence, dismissed.

4. In ground no.2, the assessee has challenged the addition made of ₹ 3,86,715, on account of non-genuine purchases.

5. Brief facts are, the assessee, a partnership firm, is engaged in the business of trading in automobile and spare parts. For the assessment year under dispute, the assessee filed its return of income on 15th October 2010, declaring total income of ₹ 20,913. Initially, the return of income filed by the assessee was 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 purchases worth ₹ 3,86,715, claimed to have been made by the assessee during the year from Mehta Auto Enterprises is non-genuine as the concerned party has been identified as a hawala operator, the Assessing Officer re-opened the assessment under section 147 of the Act. In the course of assessment proceedings, the Assessing Officer called upon the assessee to furnish documentary evidence to prove the genuineness of purchases. Not being satisfied with the evidences furnished by the assessee, the Assessing Officer ultimately concluded that the purchases made by the assessee are non-genuine. Further, he

observed, since the assessee did not produce the stock register as well as the sale invoice to co-relate the purchases with corresponding sales, there is no reason to restrict the addition only to the profit element embedded in such purchases. Accordingly, he added back the entire purchase of ₹ 3,86,715. Though, the assessee contested the aforesaid addition before the first appellate authority, however, it failed in its attempt.

6. The learned Authorised Representative submitted, the assessee has already declared gross profit @ 15%. She submitted, in respect of similar purchases by the assessee from the very same party in assessment years 2009-10 and 2011-12, the Assessing Officer has restricted the addition to 12.5% of the non-genuine purchases. Further, she submitted, while considering identical nature of dispute in assessment year 2009-10, in ITA no.473 and 35/Mum./ 2018, dated 26th November 2019, the Tribunal restricted the addition to 12.5% of the non-genuine purchases less the gross profit rate declared by the assessee. Thus, she submitted, facts being more or less identical, the addition should be restricted to a reasonable percentage.

7. The learned Departmental Representative strongly relying upon the observations of the Assessing Officer and learned Commissioner (Appeals) submitted, since the assessee has not maintained any stock register and also could not establish co-relation between the purchase

and sales, the addition made by the Assessing Officer should be sustained.

8. I have considered rival submissions and perused the material on record. It is a fact that the Assessing Officer is in possession of information received from the Sales Tax Department, Government of Maharashtra, that purchases made from Mehta Auto Enterprises is non-genuine. It is also evident, in course of assessment proceedings and even thereafter the assessee was unable to furnish any clinching evidence to establish the genuineness of the purchases from the declared source. However, the sales turnover of the assessee has not been disputed by the Assessing Officer. Only thing the Assessing Officer has observed is, the assessee failed to furnish sales invoice and stock register to establish co-relation between the purchases and sales. We have further noticed that in assessment year 2009-10 and 2011-12, the assessee had also effected purchases from the very same party and on identical facts and circumstance, the Assessing Officer had restricted the addition to 12.5% of the purchases. In fact, in the assessment year 2009-10, though the purchases were made from some other parties, the Tribunal in the order referred to above has restricted the addition to 12.5% less the gross profit declared. In the facts of the present case, the learned Authorised Representative has stated before us that the assessee has declared gross profit of

15%. After taking note of all the relevant factors including the allegation of the Assessing Officer that the assessee failed to establish the co-relation between the purchase and sales as well as the assessment orders passed for the assessment year 2009-10- and 2011-12 on identical issue, I direct the Assessing Officer to restrict the addition to 12.5% of the non-genuine purchase. The grounds raised by the assessee are partly allowed.

9. In the result, appeal is partly allowed.

Order pronounced in the open Court on 13.03.2020

Sd/-
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

True Copy
By Order

Assistant Registrar
ITAT, Mumbai