



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.3613/Mum./2019
(Assessment Year : 2009-10)

ITA no.3614/Mum./2019
(Assessment Year : 2010-11)

Income Tax Officer
Ward-22(2)(1), Mumbai

..... Appellant

v/s

Shri Kamlesh Desai
602, Kalpana, Besant Street
Santacruz (West), Mumbai 400 054
PAN – AABPD6487D

..... Respondent

Revenue by : Shri Sushil Kumar Mishra
Assessee by : None

Date of Hearing – 03.11.2020

Date of Order – 06.11.2020

ORDER

PER SAKTIJIT DEY, J.M.

These appeals by the Revenue arise out of a common order dated 5th February 2019, passed by the learned Commissioner of Income Tax (Appeals)-34, Mumbai, pertaining to the assessment years 2009-10 and 2010-11.

2. The only common dispute arising in the present appeals relate to partial relief granted by the learned Commissioner (Appeals) with

regard to the additions made by the Assessing Officer on account of non-genuine purchases.

3. Brief facts, which are common in both the assessment years are, the assessee is an individual and engaged in the business of trading in paper and boards. For the assessment year 2009-10, the assessee filed his return of income on 29th September 2009, declaring total income of ₹ 1,68,190. Similarly, for the assessment year 2010-11, the assessee filed his return of income on 24th January 2011, declaring total income of ₹ 1,45,038. The returns of income filed by the assessee were initially processed under section 143(1) of the Act. Subsequently, the Assessing Officer received information from the Sales Tax Department, Government of Maharashtra, that purchases worth ₹ 2,45,96,981, in the assessment year 2009-10 and ₹ 1,17,24,387, in the assessment year 2010-11, are non-genuine as the persons/entities from whom the assessee had claimed to have purchased the goods are merely entry providers. On the basis of such information the Assessing Officer reopened the assessments under section 147 of the Act in both the assessment years under dispute. In the course of assessment proceedings, the Assessing Officer called upon the assessee to furnish evidences to prove the genuineness of such purchases. Further, to independently verify the authenticity of such purchases, the Assessing Officer issued notices under section 133(6) of the Act to the selling dealers. However, as alleged by the

Assessing Officer, no response was received from the parties against such notices. Thus, the Assessing Officer ultimately concluded that the purchases made are non-genuine. However, relying upon the ratio laid down in a judicial precedent, the Assessing Officer disallowed 25% out of the alleged non-genuine purchases in both the assessment years. The assessee challenged the aforesaid disallowances by filing appeals before the first appellate authority.

4. After considering the submissions of the assessee in the context of the facts and material on record, learned Commissioner (Appeals) reduced the disallowance to 12.5% of the non-genuine purchases in both the assessment years.

5. When the appeal was called for hearing, no one was present on behalf of the respondent assessee to represent the case. There is no application seeking adjournment either. Considering the nature of dispute, we proceed to dispose off the appeal ex-parte qua the respondent assessee after hearing the learned Departmental Representative and on the basis of material available on record.

6. We have heard the learned Departmental Representative and perused the material on record. Undisputedly, the Assessing Officer had received information from the Sales Tax Department that certain purchases claimed to have been made by the assessee in the relevant assessment years were non-genuine as the concerned selling dealers

were found to be providing accommodation bills only. Though, the Assessing Officer on the basis of such information has treated the purchases as non-genuine, however, ultimately, he has not disallowed the entire purchases but has restricted the disallowance to 25% of such purchases which has been reduced to 12.5% by the learned Commissioner (Appeals). The very fact that the Assessing Officer has disallowed 25% of the alleged non-genuine purchases would suggest that the Assessing Officer believes that the purchases have been effected from unverified sources. Therefore, what the assessee might have suppressed is the profit element. Therefore, he has restricted disallowance to 25%. Thus, the dispute before us, precisely, is with regard to the reasonable rate of disallowance, whether 25% or 12.5%. Keeping in view the consistent view of the Tribunal in similar nature of cases, we are of the considered opinion that the decision of learned Commissioner (Appeals) in restricting disallowance to 12.5% is fair and reasonable, hence, deserves to be upheld. Accordingly, we do so. Grounds raised by the Revenue are dismissed.

7. In the result, appeals are dismissed.

Order pronounced in the open court on 06.11.2020

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 06.11.2020

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