



IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.2398/Mum./2019
(Assessment Year : 2010-11)

Income Tax Officer
Ward-20(1)(1), Mumbai

..... Appellant

v/s

Shri Anoop Okhimji Shethia (HUF)
(Prop. M/s. Indo Marine Traders)
206, Boat Hard Road, Quarry Street
Darukhana, Mumbai 400 010
PAN - AAAHA4973Q

..... Respondent

Revenue by : Ajay Singh
Assessee by : Shri Brajendra Kumar

Date of Hearing - 03.12.2020

Date of Order - 14.12.2020

ORDER

PER SAKTIJIT DEY. J.M.

Captioned appeal has been filed by the Revenue challenging the order dated 15th February 2019, passed by the learned Commissioner of Income Tax (Appeals)-320, Mumbai, pertaining to the assessment year 2010-11.

2. The dispute in the present appeal is confined to partial relief granted by learned Commissioner (Appeals) in the matter of addition made on account of non-genuine purchases.

3. Brief facts are, the assessee is a Hindu Undivided Family (HUF) and is engaged in the business of trading in iron and steel as well as mild steel (M.S.) plates. For the assessment year under dispute, the assessee filed its return of income on 26th September 2010 declaring total income of ₹ 18,97,650. Subsequently, on the basis of information received from the Sales Tax Department through DGIT (Inv.), Mumbai, indicating that purchases worth ₹ 3,01,11,494, claimed to have been made during the year from 10 parties are non-genuine, as the concerned parties have been identified as hawala operators by the Sales Tax Department and are only providing accommodation bills, the Assessing Officer re-opened the assessment under section 147 of the Act. During the assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases by furnishing certain supporting evidences. As observed by the Assessing Officer, the assessee was unable to furnish all the supporting evidences called for. Therefore, the Assessing Officer ultimately concluded that the purchases made by the assessee are non-genuine. However, relying upon some judicial precedents the Assessing Officer disallowed 25% of the alleged non-genuine purchases and made

addition of ₹ 75,27,874, as unexplained expenditure under section 69C of the Act. The assessee contested the aforesaid disallowance 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) restricted the addition to ₹ 19,87,359, being 6.6% of the alleged non-genuine purchases.

5. We have carefully considered rival submissions and perused the material on record. The factual matrix reveals that, though, the Assessing Officer held certain purchases claimed to have been made by the assessee as non-genuine, however, he has not doubted the sales turnover shown by the assessee. This, in other words, means that the assessee has effected corresponding sales against the purchases treated as non-genuine. For this reason alone, the Assessing Officer instead of disallowing the entire purchases has disallowed 25% out of such purchases. Learned Commissioner (Appeals) having found that the VAT rate on goods purchased by the assessee is 4%, whereas, the assessee has a fall in gross profit rate shown at 5.9% in the impugned assessment year compared to the previous two years, has restricted the disallowance to 6.6% being the difference between the profit element generally estimated in case of

non-genuine purchases @ 12.5% and the gross profit rate shown by the assessee at 5.9%. In our view, the aforesaid decision of learned Commissioner (Appeals) is fair and reasonable considering the fact that the profit rate as per industry norms in the line of business carried on by the assessee would not be more than what has been estimated by the learned Commissioner (Appeals). In view of the aforesaid, we uphold the decision of learned Commissioner (Appeals) by dismissing the grounds raised by the Revenue.

6. In the result, appeal is dismissed.

Order pronounced in the open court on 14.12.2020

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 14.12.2020

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