



IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.4097/Mum./2019
(Assessment Year : 2010-12)

ITA no.4098/Mum./2019
(Assessment Year : 2011-12)

Income Tax Officer
Ward-22(3)(2), Mumbai

..... Appellant

v/s

Shri Santosh Ramesh Shah
13/88, Amba Bhan Road no.8
Prabhat Colony, Santacruz (E)
Mumbai 400 055 PAN-BAQPS8905M

..... Respondent

Revenue by : Shri Sanjay J. Sethi
Assessee by : Shri Vishesh Srivastava

Date of Hearing - 07.12.2020

Date of Order - 17.12.2020

ORDER

Captioned appeals have been filed by the Revenue challenging a common order dated 9th March 2019, passed by the learned Commissioner of Income Tax (Appeals)-34, Mumbai, pertaining to the assessment years (in short A.Y.) 2010-11 and 2011-12.

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

3. Brief facts are, the assessee, an individual, is engaged in the business of trading in aluminum ingots and castings. For the assessment years under dispute, the assessee filed his returns of income as per the details given below:-

	<i>Date of filing of return of income</i>	<i>Total amount declared in the return of income</i>
<i>A.Y. 2010-11</i>	<i>29.09.2010</i>	<i>₹ 3,90,580</i>
<i>A.Y. 2011-12</i>	<i>30.09.2011</i>	<i>₹ 6,23,530</i>

4. The returns filed by the assessee were initially processed under section 143(1) of the Act. Subsequently, on the basis of information received from the Sales Tax Department, Government of Maharashtra, through DGIT (Inv.), Mumbai, that purchases worth ₹ 3,37,889 in assessment year 2010-11 and ₹ 5,75,623, in assessment year 2011-12 are non-genuine, as the concerned parties were identified as hawala operators, the Assessing Officer re-opened the assessments under section 147 of the Act. During the assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of such purchases through supporting evidence. Further, to independently verify the genuineness of such purchases, the Assessing Officer issued notices under section 133(6) of the Act to the concerned parties. However, as alleged by the Assessing Officer, no reply was

received from the party concerned in response to such notices. Not being satisfied with the evidences furnished by the assessee, the Assessing Officer ultimately concluded that the purchases are non-genuine. However, the Assessing Officer ultimately disallowed 25% out of such purchases working out to ₹ 3,37,889 in A.Y. 20010-11 and ₹ 5,75,623 in A.Y. 2011-12 and added back to the income of the assessee. The assessee challenged the aforesaid additions before the first appellate authority.

5. After considering the submissions of the assessee in the context of the facts and material on record, learned Commissioner (Appeals) restricted the addition to 12.5% of the alleged non-genuine purchases.

6. I have heard the learned counsels for the parties and perused the material on record. It is evident, the doubt regarding the genuineness of the disputed purchases was on the basis of information received from the Sales Tax Department, Government of Maharashtra. However, the Assessing Officer has accepted the fact that the assessee has produced some supporting evidence to prove the genuineness of purchases. The only reason for which he did not accept the purchases to be genuine is, the assessee neither could produce the concerned parties nor could furnish transportation bills, weighment bills, etc.

However, the very fact that the Assessing Officer did not disallow the entire purchases but has restricted the disallowance to 25% of the alleged non-genuine purchases indicates that the Assessing Officer also believes that the assessee had purchased the goods, though, may not be from the declared source. Therefore, he has proceeded to add the profit element embedded in such purchases. However, the estimation of profit @ 25% in my view is on a much higher side. Therefore, I fully agree with learned Commissioner (Appeals) in restricting the disallowance to 12.5% of the non-genuine purchases. Accordingly, the order of learned Commissioner (Appeals) for the assessment years under consideration is upheld by dismissing the grounds raised by the Revenue.

7. In the result, the appeals are dismissed.

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963, on 17.12.2020

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 17.12.2020

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