



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.4099/Mum./2019
(Assessment Year : 2009-10)

ITA no.4100/Mum./2019
(Assessment Year : 2010-11)

ITA no.4101/Mum./2019
(Assessment Year : 2011-12)

Income Tax Officer
Ward-22(1)(3), Mumbai

..... Appellant

v/s

Bhikam Chand Mutha
R. no.24-A, Shreenath CHS
5th Gandhi Chowk Road
Prabhat Colony, Santacruz (E)
Mumbai 400 055 PAN-AFVPM8386F

..... Respondent

Revenue by : Shri Sanjay J. Sethi
Assessee by : None

Date of Hearing - 07.12.2020

Date of Order - 28/01/2021

ORDER

The aforesaid appeals have been filed by the Revenue challenging a common order dated 25th March 2019 passed by the learned Commissioner of Income Tax (Appeals)-34, Mumbai, pertaining to the assessment years 2009-10, 2010-11 and 2011-12.

2. When these appeals were called for hearing, no one was present on behalf of the assessee to represent them. There is no application

seeking adjournment either. Considering the nature of dispute, I proceed to dispose off the appeals ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. The only common dispute in all these appeals relates to disallowance made on account of non-genuine purchases.

4. Brief facts are, the assessee, an individual, is engaged in the business of trading in hardware, aluminum section, aluminum grill item etc. For the assessment years in dispute, the assessee filed its returns of income in regular course as per section 139(1) of the Act. The returns of income filed by the assessee were initially processed under section 143(1) of the Income Tax Act, 1961 (for short "*the Act*"). Subsequently, on the basis of information received from the Sales Tax Department through DGIT (Inv.), Mumbai, indicating that purchases worth ` 85,632 in Assessment Year. 2009-10, ` 1,90,704, in Assessment Year 2010-11 and ` 3,52,802 in Assessment Year 2011-12 are non-genuine, the Assessing Officer re-opened the assessments under section 147 of the Act. In the course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of the aforesaid purchases through supporting evidence. Since, the evidences produced by the assessee were not to

the satisfaction of the Assessing Officer, he held that the purchases shown by the assessee are non-genuine. Further, he observed, the gross profit shown by the assessee is also low. Therefore, relying upon certain judicial precedents, he proceeded to estimate the profit on the alleged non-genuine purchases by applying the rate of 25%. Accordingly, he made additions of ` 21,408 for Assessment Year 2009-10, ` 47,676 for Assessment Year 2010-11 and ` 88,200 for Assessment Year 2011-12. Though, the assessee contested the aforesaid additions before learned Commissioner (Appeals), however, learned Commissioner (Appeals) restricted the additions to 12.5%.

5. I have considered the submissions of learned Departmental Representative and perused the material on record. On going through the orders of the Departmental Authorities, it is manifest that there was specific information received from the Sales Tax Department to indicate that certain purchases made by the assessee were non-genuine as concerned selling dealers were identified as hawala operators by the Sales Tax Department. In the course of assessment proceedings, the Assessing Officer had called upon the assessee to furnish certain documentary evidences, such as, delivery challan, transportation bills, purchase bills, goods received notes, etc. However, the documents called for could not be furnished by the

assessee in its entirety. Further, the notices issued under section 133(6) of the Act to the concerned selling dealers returned back unserved. Thus, from the aforesaid facts, it is quite clear that the assessee failed to conclusively prove the fact that the purchases were made from the declared source. However, considering the fact that the assessee has effected corresponding sales, doubt was only with regard to the source of purchases. For this reason alone, the Assessing Officer has estimated the profit element embedded in non-genuine purchases @ 25% and learned Commissioner (Appeals) has restricted to 12.5%. This is solely for the reason that the assessee must have purchased the goods from unverified sources/grey market by not paying VAT and thereby suppressing the true profit. Considering the nature of business of the assessee and the profit rate generally adopted by the Tribunal in such type of cases, I do not find any infirmity in the decision of learned Commissioner (Appeals) in restricting the addition to 12.5% of the alleged non genuine purchases. Therefore, the grounds raised in all these appeals are dismissed.

6. In the result, appeals are dismissed.

Order pronounced on 28/01/2021

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 28/01/2021

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

By Order

Assistant Registrar
ITAT, Mumbai