



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.4191/Mum./2019
(Assessment Year : 2009-10)

M/s. S.B. Panchal & Company
Unit no.8, Jogani Industrial Estate
Senapati Bapat Marg, Mumbai 400 028
PAN – AAASF5950K

..... Appellant

v/s

Income Tax Officer
Ward-21(3)(2), Mumbai

..... Respondent

Assessee by : Shri Madhur Agarwal
Revenue by : Shri Sanjay J. Sethi

Date of Hearing – 17.12.2020

Date of Order – 28/01/2021

ORDER

Aforesaid appeal has been filed by the assessee challenging the order dated 10th April 2019, passed by the learned Commissioner of Income Tax (Appeals)-33, Mumbai, for the assessment year 2009-10.

2. At the outset, Shri Madhur Agarwal, leaned Counsel for the assessee submitted that on the instructions of the assessee, he would not press ground no.3. Accordingly, ground no.3, is dismissed as not pressed.

3. 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*"). Whereas, in ground no.2, the assessee has challenged the merits of the disallowance made on account of alleged non-genuine purchases.

4. Brief facts are, the assessee, a partnership firm, is engaged in manufacture and sale of pharmaceutical machineries. For such manufacturing activities, the assessee purchases steel from various parties. For the assessment year under dispute, the assessee had filed its return of income on 25th September 2009, declaring total income of ` 3,00,018. The return of income filed by the assessee was initially processed under section 143(1) of the Act. Subsequently, the Assessing Officer received information from the Sales Tax Department indicating that steel purchased amounting to ` 14,80,433, from two parties are non-genuine as the concerned parties have been found to be providing accommodation bills. On the basis of such information, 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. Further, to independently verify the genuineness of such purchases, the Assessing Officer issued notices under section 133(6) of the Act to the selling dealers. However, the notices issued returned back unserved. Therefore, the Assessing Officer was of the view that

purchases are non-genuine. However, considering the fact that the assessee has effected sales he concluded that the goods must have been purchased from grey market by suppressed profit. Accordingly, he disallowed 25% out of the purchases of ` 14,80,433, and added back an amount of ` 3,70,108. Though, the assessee contested the aforesaid addition before the first appellate authority, however, he sustained the addition made by the Assessing Officer.

5. The learned Counsel for the assessee submitted, the re-opening of assessment is bad-in-law as in the reasons recorded the Assessing Officer has referred to expenditure of ` 7,776, whereas, in the assessment order, he has treated the purchases of ` 14,80,433, as non-genuine. Thus, he submitted, the reasons recorded clearly reveal complete non-application of mind by the Assessing Officer.

6. As regards the merits of the issue raised in ground no.2, the learned Counsel for the assessee submitted, the assessee has paid the VAT component on the disputed purchases. Further, he submitted, the profit ratio on the goods (steel) purchased by the assessee varies between 5% to 8%. Therefore, he submitted, disallowance @ 25% is high and excessive and has to be scaled down to a reasonable figure.

7. The learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

8. I have considered the rival submissions and perused the material on record. As regards the issue relating to re-opening of assessment under section 147 of the Act, I find that after processing of return of income under section 143(1) of the Act, the Assessing Officer had received specific information from the Sales Tax Department that certain purchases claimed to have been made by the assessee during the year are non-genuine. Therefore, the Assessing Officer has tangible material in his possession to form a belief regarding escapement of income. Mentioning of a wrong figure in the reasons recorded, therefore, would not invalidate the proceeding. Therefore, I uphold the validity of re-opening of assessment under section 147 of the Act. As regards the merits of the issue, the assessment order itself reveals that the Assessing Officer accepts the fact that as against the purchases made, the assessee has effected corresponding sales. Therefore, he has only doubted the source of purchases, hence, has added back the profit element embedded in such purchases by estimating it @ 25%. Considering the fact that the disputed goods purchased by the assessee is steel, wherein, as per industry norms, the profit rate varies between 5% and 8% and further, the fact that

the assessee has paid applicable VAT on such purchases to the Sales Tax Authorities because of the default made by the selling dealers, I am of the considered opinion that disallowance @ 8% of the alleged non-genuine purchases would be fair and reasonable. Accordingly, I direct the Assessing Officer to restrict the disallowance to 8% of the non-genuine purchases. The grounds raised by the assessee are partly allowed.

9. In the result, appeal is partly allowed.

Order pronounced on 28/01/2021

MUMBAI, DATED: 28/01/2021

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

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