

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

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)

I.T.A. No.4898/Mum/2019
(Assessment year : 2011-12)

ITO 26(2)(5), Mumbai	vs	Raisunnisa Shafique Ahmed Khan 14B / 206, Kapadiya Nagar CST Road, Kurla (W), Mumbai-400 070 PAN : AAPPK5897G
(APPELLANT)		(RESPONDENT)

Appellant by	Smt. Smita Verma (DR)
Respondent by	Shri Vimal Punmiya, AR

Date of hearing	02-02-2021
Date of Pronouncement	10/02/2021

ORDER

Per Saktijit Dey, JM

This is an appeal by the revenue against the order dated 29-01-2019 of learned Commissioner of Income Tax (Appeals)-38Mumbai for the assessment year 2011-12.

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

3. Briefly the facts are, the assessee is an individual and is a reseller of M.S. pipes and tubes. For the assessment year under dispute, the assessee filed her return of income on 29-09-2011 declaring total income of Rs.6,68,992/-. The return of income filed by the assessee was initially processed under section 143(1) of the Income Tax Act, 1961. Subsequently, on the basis of information received from the sales-tax authorities through the Investigation Wing that the assessee is a beneficiary of accommodation bills relating to purchases worth Rs.35,61,813/- made from three parties, the Assessing Officer reopened the assessment under section 147 of the Act. In course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases. As observed by the Assessing Officer, the documents furnished by the assessee could not establish the genuineness of purchases. Further, he observed, notices issued under section 133(6) of the Act to independently verify the genuineness of purchases did not evoke any result as they returned unserved. Thus, the Assessing Officer, ultimately treated the entire purchases of Rs.35,51,813 as non-genuine and added back to the income of the assessee. The assessee contested the aforesaid addition before the first appellate authority. After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) restricted the disallowance to the profit element embedded in the alleged non genuine purchases by estimating it at 12.5%. Thus, effectively, he sustained disallowance to the extent of Rs.4,45,227/-.

4. The learned Departmental Representative submitted, the assessee having failed to prove the genuineness of purchases claimed to have been made from the concerned parties, there is no justification on the part of learned Commissioner (Appeals) to restrict the disallowance to 12.5%.

5. Per contra, the learned Commissioner (Appeals) for the assessee strongly relied upon the observations of the first appellate authority.

6. I have considered rival submissions and perused materials on record. Undisputedly, the basis for disallowance of the disputed purchases is the information received from sales-tax department that certain parties were providing accommodation bills by issuing bogus purchase bills. It is evident, in course of assessment proceedings the assessee had furnished some documentary evidences to prove the genuineness of purchases. Further, the sales effected by the assessee have not been disputed or doubted by the Assessing Officer. Therefore, it can be logically concluded that in absence of purchases, the assessee could not have effected the corresponding sales. Therefore, the doubt, if any, is only with regard to the source of purchases. That being the case, to protect the revenue leakage that might have happened due to purchase of goods by the assessee from grey market / undeclared source, learned Commissioner (Appeals) has disallowed the profit element embedded in such purchases. In my considered opinion, the aforesaid approach of learned Commissioner (Appeals) being fair and in accordance with law, needs no interference. Grounds are dismissed.

7. In the result, appeal is dismissed.

Order pronounced in the Open Court on this 10/02/2021.

(SAKTIJIT DEY)
JUDICIAL MEMBER

Mumbai, Dated : 10 / 02/2021.
Pavanan, Sr.P.S (on contract)

Copy of the order forwarded to :

1. The Appellant.
2. The Responent.
3. The CIT(A)
4. 4. The CIT
5. D.R., ITAT, Mumbai.
6. Guard File.

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By order

I.T.A.T., Mumbai.