



IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.4937/Mum./2019
(Assessment Year : 2010-11)

ITA no.4938/Mum./2019
(Assessment Year : 2011-12)

Income Tax Officer
Ward-26(1)(5), Mumbai

..... Appellant

v/s

Shri Gul Naraindas Mulchandani
Narayan Tailors
Prem Kunj Society
Sion Circle, Sion
Mumbai 400 022
PAN - ABHPT6150C

..... Respondent

Revenue by : Ms. Smita Verma
Assessee by : Shri Sitaram Pareek

Date of Hearing - 03.02.2021

Date of Order - 16.02.2021

ORDER

PER SAKTIJIT DEY. J.M.

The captioned appeals filed by the Revenue arise out of two separate orders passed by the learned Commissioner of Income Tax (Appeals)-38, Mumbai, for the assessment years 2010-11 and 2011-12.

2. The only common dispute in both the appeals relate to partial relief granted by learned Commissioner (Appeals) in the matter of addition made on account of non-genuine purchases.

3. Brief facts, which are common in both the appeals are, the assessee, an individual, is stated to be engaged in the business of trading in textiles. For the assessment years under consideration, the assessee had filed his returns of income in regular course which were processed under section 143(1) of the Act. Subsequently, the Assessing Officer received information from the Sales Tax Department through Investigation Wing to the effect that the assessee is a beneficiary of accommodation bills by way of non-genuine purchases amounting to ₹ 3,40,275 in assessment year 2010-11 and ₹ 40,063 in assessment year 2011-12. On the basis of such information, 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 purchases. Though, the assessee furnished some documentary evidences, however, they were not to the satisfaction of the Assessing Officer. Further, as observed by the Assessing Officer, notices issued under section 133(6) of the Act to independently verify the genuineness of purchases also returned back un-served. Thus, the Assessing Officer ultimately concluded that the purchases are non-genuine. However, considering the fact that the

assessee had effected corresponding sales, the Assessing Officer concluded that the assessee was in possession of the disputed goods. Therefore, instead of disallowing the entire purchases, he disallowed 20% and 21.27% of the alleged non-genuine purchases in assessment years 2010-11 and 2011-12 respectively. Effectively, the Assessing Officer disallowed an amount of ₹ 68,055 in assessment year 2010-11 and ₹ 8,521 in assessment year 2011-12. The assessee contested the aforesaid disallowances before learned Commissioner (Appeals).

4. After considering the submissions of the assessee in the context of the facts and material on record, learned Commissioner (Appeals) restricted the disallowance to 12.5% of the alleged non-genuine purchases in both the assessment years under dispute.

5. I have considered rival submissions the material on record. Though, it may be a fact that the assessee was unable to furnish complete evidences to conclusively prove the source of purchases, however, the fact that the assessee had purchased the goods, possibly from unverified sources, has not been disputed by the Assessing Officer since he has accepted that the disputed goods representing such purchases were in possession of the assessee. Therefore, instead of disallowing the entire purchases, he has restricted the disallowance to gross profit rate declared by the assessee. Whereas, learned

Commissioner (Appeals) has restricted such disallowance to 12.5% of non-genuine purchases. Thus, the dispute is basically with the percentage of disallowance. Keeping in view the generally followed legal position in these types of cases, I am of the considered opinion that the decision of learned Commissioner (Appeals) in restricting the disallowance to 12.5% of the non-genuine purchases is fair and reasonable, hence, deserves to be upheld. Accordingly, I do so. Grounds are dismissed.

6. In the result, appeals are dismissed.

Order pronounced on 16.02.2021

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 16.02.2021

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

True Copy
By Order

Assistant Registrar
ITAT, Mumbai