

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)

I.T.A. No.4868/Mum/2019
(Assessment year 2010-11)

M/s Dynamic Metal House Shop No.1, Kolsa Mohalla Street Mumbai PAN : AACFD4330N	vs	ITO-17(1)(4), Mumbai
APPELLANT		RESPONDENT

Appellant by	None
Respondent by	Ms. Smita Verma, DR

Date of hearing	01-02-2021
Date of pronouncement	25 -02-2021

ORDER

This is an appeal by the assessee against order dated 31-05-2019 of learned Commissioner of Income-tax (Appeals)-28, Mumbai for the assessment year 2010-11.

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. Considering the nature of dispute, I proceed to dispose of the appeal ex parte qua the assessee, after hearing the learned Departmental Representative and on the basis of materials on record.

3. The dispute in the present appeal is confined to disallowance made on account of non genuine purchases.

4. Briefly, the facts are, the assessee, a partnership firm, is engaged in the business of trading in non ferrous metal. For the assessment year under dispute, assessee filed its return of income on 14-10-2010 declaring Nil income. The return of income so filed was initially processed under section 143(1) of the Act. Subsequently, the assessing officer received information from the Sales-tax department through the Investigation Wing that purchases worth Rs.97,33,680/- claimed to have been made during the year from fifteen parties are non genuine as the concerned parties have been identified as hawala operators. On the basis of such information, 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 such purchases. In response to query raised, the assessee furnished copies of ledger account of the selling dealer, purchase bills, bank statement evidencing payments made through cheques, purchase register, etc. The assessing officer, however, was not convinced with the evidences furnished by the assessee, as according to him, the assessee could not furnish direct evidence such as stock register, delivery challan, lorry receipt, octroi payment, confirmation from transport operators, etc. Further, the notices issued u/s 133(6) of the Act seeking information from the selling dealers returned back unserved. Therefore, the assessing officer concluded that the purchases are non genuine. However, instead of disallowing the entire purchases, the assessing officer disallowed an amount of Rs.12,16,710/- being 12.5% of the alleged non genuine purchases. The aforesaid disallowance was also sustained by the learned Commissioner (Appeals) while deciding assessee's appeal.

5. Heard learned Departmental Representative and perused the material available on record. Though, the assessing officer has held the disputed purchases

to be non genuine; however, he was convinced that not only the assessee had purchased the goods from some other sources, but has also effected corresponding sales. Therefore, he has restricted the disallowance to profit element embedded in such purchases by estimating it at 12.5%. Considering the fact that the assessee is a trader in non ferrous metal on which the normal profit rate as per industry norms varies between 2% to 5%, the disallowance made at 12.5% appears to be on a much higher side. Therefore, I direct the assessing officer to restrict the disallowance to 5% of the non genuine purchases. Ground is partly allowed. The assessing officer is also directed to give due credit for the advance-tax paid by the assessee after verifying facts and materials on record and in accordance with law.

6. In the result, appeal is partly allowed.

Order pronounced on 25/02/2021.

Sd/-

SAKTIJIT DEY
JUDICIAL MEMBER

Mumbai, Dt : 25/02/2021

Pavanan

Copy to :

1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
6. Guard File

/True copy/

By Order

Asstt. Registrar, ITAT, Mumbai