



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.4966/Mum./2019  
(Assessment Year : 2010-11)

Asstt. Commissioner of Income Tax  
Circle-22(1), Mumbai

..... Appellant

v/s

Chandra Prakash Sharma (HUF)  
21, 2<sup>nd</sup> Floor, Asiya Manzil  
K.K. Road, Opp. Royal Hotel  
Santacruz (W), Mumbai 400 054  
PAN – AAAHS6863B

..... Respondent

Revenue by : Ms. Smita Verma  
Assessee by : None

Date of Hearing – 03.02.2021

Date of Order – 24.02.2021

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The captioned appeal filed by the Revenue arises out of order dated 2<sup>nd</sup> May 2019, passed by the learned Commissioner of Income Tax (Appeals)-32, Mumbai, for the assessment year 2010-11.

2. When the appeal was called for hearing, no one was present on behalf of the assessee. 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 available on record.

3. The only dispute is confined to partial relief granted by the learned Commissioner (Appeals) in the matter of addition made on account of non-genuine purchases.

4. Brief facts are, the assessee a Hindu Undivided Family (HUF) is engaged in the business of civil and labour contractor. For the assessment year under dispute, the assessee filed its return of income on 25<sup>th</sup> September 2010 declaring income of ₹ 20,15,087. Assessment in case of the assessee was originally completed under section 143(3) of the Act. Subsequently, the Assessing Officer received information from the Sales Tax Department through the Investigation Wing indicating that the assessee is a beneficiary of accommodation bills provided by certain parties towards purchases worth ₹ 84,46,199. On the basis of such information the Assessing Officer re-opened the assessment under section 147 of the Act. In course of assessment proceedings, the Assessing Officer called upon the assessee to furnish evidence to prove the purchases. In response, the assessee furnished certain documentary evidences to support its claim that purchases are genuine. However, the Assessing Officer was not convinced with the assessee's claim. Further, as observed by the Assessing Officer,

notices issued under section 133(6) of the Act to the selling dealers returned back un-served. Therefore, he concluded that the purchases are non-genuine. After rejecting the books of account the Assessing Officer disallowed 20% of the alleged non-genuine purchases, thereby, making an addition of ₹ 16,89,240. The assessee challenged the aforesaid disallowance before the first appellate authority.

5. After considering the submissions of the assessee in the context of the facts and material on record, learned Commissioner (Appeals) restricted the disallowance to ₹ 4,00,000.

6. I have considered the submissions of the learned Departmental Representative and perused the material on record. It is evident from the assessment order, in the course of assessment proceedings the assessee had furnished the month wise quantitative details of sales and purchases, invoices and delivery challans, ledger account, etc. It further appears that the primary reasons for which the Assessing Officer did not accept the purchases as genuine is, the notices issued under section 133(6) of the Act returned back un-served and further, the assessee failed to produce the concerned parties. However, it is a fact on record that the Assessing Officer was convinced that the goods representing the disputed purchases have entered the stock of the assessee and the assessee has made the corresponding

sales/utilization. Therefore, instead of disallowance the entire purchases, the Assessing Officer has disallowed 20% out of it. As could be seen, learned Commissioner (Appeals) taking note of the fact that the major VAT rate on the goods purchased are 4% and 12.5% and the total amount of VAT which the assessee might have saved by purchasing the goods from unverified sources would amount to ₹ 3,76,042, has restricted the disallowance to ₹ 4,00,000. I find the aforesaid decision of learned Commissioner (Appeals) fair and reasonable. Therefore, there is no need to interfere with his order. Accordingly, grounds are dismissed.

7. In the result, appeal is dismissed.

Order pronounced in the open court on 24.02.2021

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 24.02.2021**

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