



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.4968/Mum./2019
(Assessment Year : 2011-12)

Income Tax Officer
Ward--19(3)(1), Mumbai

..... Appellant

v/s

Shri Rajesh M. Chauhan
403, Dharam Palace
National Park Shantivan
Borivali (E), Mumbai 400 066
PAN - AAEP3596K

..... 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 has been filed by the Revenue against order dated 22nd May 2019, passed by the learned Commissioner of Income Tax (Appeals)-6, Mumbai, for the assessment year 2011-12.

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

4. Brief facts are, the assessee is an individual and is stated to be a labour contractor for engineering work. For the assessment year under dispute, the assessee filed his return of income on 24th September 2011 declaring total income of ₹ 2,84,884. 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 through Investigation Wing that the assessee is a beneficiary of accommodation bills provided for purchases worth ₹ 37,16,912. On the basis of such information, the Assessing Officer re-opened the assessment under section 147 of the Act. In the course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases. In response, though, the assessee furnished some documentary evidences, however, the Assessing Officer was not satisfied with them. Further, the notices issued by the Assessing Officer under section 133(6) of the Act seeking information from the selling dealers returned back un-served.

Thus, the Assessing Officer concluded that the purchases claimed to have been made by the assessee are non-genuine. Having held so, he disallowed an amount of ₹ 9,29,228, being 25% of the alleged non-genuine purchases and added back to the income of the assessee.

5. The assessee contested the aforesaid disallowance before the learned Commissioner (Appeals). Taking note that in assessee's own case in assessment year 2009-10, the first appellate authority has restricted the disallowance to 12.5% of non-genuine purchases, learned Commissioner (Appeals) followed the same and restricted the disallowance to 12.5% of the non-genuine purchases in the impugned assessment year.

6. I have considered the submissions of the learned Departmental Representative and perused the material on record. Though, it may be a fact that the assessee could not furnish conclusive evidence to prove the source of the disputed purchases, however, the fact that the assessee had purchased the goods from some other sources has not been disputed by the Assessing Officer. Therefore, instead of disallowing the entire purchases, he has disallowed 25% of the purchases alleged to be non-genuine. Learned Commissioner (Appeals) has restricted such disallowance to 12.5% of the non-genuine purchases. Thus, ultimately, the dispute is confined to the

rate at which the disallowance is to be made. After taking note of all the relevant factors and the legal authorities on the issue, I agree with the decision of learned Commissioner (Appeals) in restricting the disallowance to 12.5% of the alleged non-genuine purchases. Accordingly, I uphold the order of learned Commissioner (Appeals) by dismissing the grounds raised.

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