

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

BEFORE SHRI SAKTIJIT DEY (JM)

**ITA No.6902/MUM/2019
Assessment Year: 2009-10**

Income Tax Officer – 20(3)(2), Room No. 612, 6 th Floor, Piramal Chambers, Lalbaug, Parel, Mumbai - 400012	Vs.	Mr. Sahabullah M.S. Khan, Plot No. 218, Kolsa Bunder, Darukhana, Mumbai - 400010 PAN: AMBPK5209N
(Appellant)		(Respondent)

Revenue by : Shri Shiddaramppa (DR)

Assessee by : None

Date of Hearing : 24/05/2021

Date of Pronouncement: 25/06/2021

ORDER

This is an appeal by the revenue against the order dated 28.08.2019 of learned Commissioner of Income Tax (Appeals)-32, Mumbai for the assessment year 2009-10.

2. When the appeal was called for hearing, none appeared on behalf of the assessee. However, considering the nature of dispute, I proceed to dispose of the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and based on materials on record.

3. The dispute in the present appeal is confined to partial relief granted by the learned Commissioner (Appeals) in the matter of disallowance made because of alleged non-genuine purchases.

4. Briefly the facts are, the assessee is an individual and is engaged in the business of trading in Iron and Steel. For the assessment year under dispute, the assessee filed his return of income on 30.09.2009 declaring total income at Rs. 2,27,994/-. Subsequently, the Assessing Officer (AO) received information

from DGIT (Inv.), Mumbai that purchases worth Rs. 1,17,51,389/- claimed to have been made during the year are non-genuine as the concerned selling dealers are providing accommodation bills only. Based on such information, the AO reopened the assessment under section 147 of the Act. In course of assessment proceedings, the AO called upon the assessee to furnish supporting evidence to prove the purchases. Alleging that the assessee could not furnish supporting evidence to prove the source of purchases, the AO disallowed Rs. 1,46,68,924/-, being 12.5% of the alleged non genuine purchases. The assessee contested the aforesaid disallowance before learned Commissioner (Appeals). Partly accepting assessee's contention learned Commissioner (Appeals) restricted the disallowance to 5% of the alleged non-genuine purchases.

5. I have considered the submissions of learned Departmental Representative and perused the materials on record. The dispute before me is confined only to the profit element which can be considered for disallowance. While the AO has estimated the profit element embedded in the alleged non genuine purchases at 12.5%, learned Commissioner (Appeals) reduced it to 5% by taking note of the applicable VAT rate of 4% on the goods purchased by the assessee. Having considered the material facts as well as the nature of business of the assessee, I fully agree with the decision of learned Commissioner (Appeals) in restricting the disallowance to 5%. Grounds raised are dismissed.

6. In the result, appeal is dismissed.

Order pronounced in the open court on 25th June, 2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 25/06/2021

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.
सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai