

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

BEFORE SHRI SAKTIJIT DEY (JM)

**ITA No. 806/MUM/2019
Assessment Year: 2011-12**

The Income Tax Officer-24(1)(3), Room No. 606, Piramal Chambers, Jeejeebhoy Lane, Lalbaug, Parel, Mubmai - 400012	Vs.	Smt. Bijal Prashant Kalbag, 1/B, Dashmesh Colony, Four Bungalow Road, Andheri (W), Mumbai - 400058 PAN: AIZPK3640D
(Appellant)		(Respondent)

Revenue by : Shri Saurabh Rai (DR)
Assessee by : None

Date of Hearing: 27/05/2021
Date of Pronouncement: 25/06/2021

ORDER

PER SAKTIJIT DEY, JM

This is an appeal by the revenue against order dated 16.11.2018 of learned Commissioner of Income Tax (Appeals)-36, Mumbai. Though, the impugned order of learned Commissioner (Appeals) is a common order for assessment years 2009-10, 2010-11 and 2011-12, however, presently I am concerned with assessment year 2011-12 only.

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. 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 material on record.

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

4. Briefly the facts are, the assessee is an individual and is stated to be carrying on business in manufacture of trophies and gift items. For the assessment year under dispute, the assessee had filed her return of income on 26.09.2011 declaring total income of Rs. 11,35,938/-. Subsequently, based on information received from Sales Tax Department, Government of Maharashtra through the DGIT (Inv.), Mumbai that purchases worth Rs. 12,44,297/- claimed to have been made during the year are in the nature of accommodation entries, hence, non-genuine, the Assessing Officer (AO) reopened the assessment under section 147 of the Act. In course of assessment proceedings, the AO called upon the assessee to prove the genuineness of the disputed purchases. Though, the assessee furnished certain documentary evidences in support of the purchases, however, the AO was not convinced. Accordingly, he concluded that the assessee was unable to prove that the purchases from the concerned parties are non-genuine. However, he accepted that the goods in question were actually purchased by the assessee, may be, from grey market at a lower rate. Therefore, he disallowed the profit element embedded in such purchases by estimating at 18%. Thus, he worked out the disallowance at Rs. 2,23,973/- and added to the income of the assessee. Assessee contested the aforesaid disallowance before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) restricted the disallowance to 12.5% of the alleged non-genuine purchases.

5. I have considered the submissions of learned Departmental Representative and perused the material on record. As could be seen from the facts on record, though, the AO was of the view that the assessee could not prove that the disputed purchases were made from the concerned parties,

however, he accepted the fact that the goods in dispute, indeed, were purchased by the assessee from unverified sources. For this reason alone, instead of disallowing the entire purchases, the AO has disallowed the profit element embedded in such purchases by estimating at 18%. Whereas, learned Commissioner (Appeals) has reduced it to 12.5%. Thus, the dispute is only with regard to the quantum of profit element, which can be considered for disallowance. After considering the overall facts, I am of the view that the decision of learned Commissioner (Appeals) in restricting the disallowance 12.5% of the alleged non-genuine purchases is fair and reasonable, hence, needs to be upheld. Accordingly, I do so. Grounds 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