



IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA no.873/Mum./2020
(Assessment Year : 2012-13)

Asstt. Commissioner of Income Tax
Circle-17(2), Mumbai

..... Appellant

v/s

Shri Jiten Himatlal Dadia
304, Sujata Chambers, 1/3 Abhechand
Gandhi Marg, N.N. ST Masjid Bunder (W)
Mumbai 400 009 PAN – CAAPD0740E

..... Respondent

Revenue by : Ms. Usha Gaikwad
Assessee by : None

Date of Hearing – 17.08.2021

Date of Order – 25.10.2021

ORDER

The captioned appeal has been filed by the Revenue challenging the order dated 26th November 2019, passed by the learned Commissioner of Income Tax (Appeals)-28, Mumbai, pertaining to the assessment year 2012-13.

2. When the case was called for hearing, none appeared on behalf of the respondent assessee. Therefore, we proceed to dispose off the appeal ex-parte qua the respondent assessee after hearing the

learned Departmental Representative and on the basis of material on record.

3. The issue raised in the present appeal relates to partial relief granted by learned CIT(A) in respect of addition made on account of non-genuine purchases.

4. Brief facts are, the assessee is a proprietor of M/s. Venus International, which is engaged in the business of import and trading in chemicals, solvents and pharma intermediates. The assessee filed his return of income on 22nd September 2012, declaring total income at ₹ 1,60,30,012, which was processed on 23rd September 2013, under section 143(1) of the Income Tax Act, 1961 (for short "the Act"). Subsequently, on the basis of information received from the DGIT (Inv.), Sales Tax Department, Mumbai, Government of Maharashtra, indicating that the assessee was engaged in the practice of inflating the purchases by accepting accommodation entries provided by hawala operators through bogus purchase bills. The Assessing Officer re-opened the assessment under section 147 of the Act. During the assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases worth ₹ 25,38,256, claimed to have been made during the year from various parties. Since the Assessing Officer was not satisfied with the evidences furnished by

the assessee to establish the genuineness of purchases. Thus, the Assessing Officer made addition @ 25% of the entire amount of ₹ 25,38,256, and added it to the income of the assessee.

5. The learned CIT(A) restricted the disallowance made by the Assessing Officer to 12.5% of the alleged non-genuine purchases.

6. Before us, the learned Departmental Representative strongly relied upon the observations of the Assessing Officer and submitted that the assessee having failed to prove the genuineness of purchases, the entire amount proposed by the AO representing such purchases has to be added.

7. Having considered the submissions of the learned Departmental Representative, we find that, though, the assessee may not have been able to prove the genuineness of purchases from the declared sources, however, it is a fact on record that the Assessing Officer has not disputed the sales declared by the assessee. Therefore, it goes to prove that the assessee must have purchased goods from some other undisclosed/unverified source. In such circumstances, it is the settled legal position that the entire purchases cannot be disallowed, but only the profit element embedded in such purchases can be considered for addition. Therefore, keeping in view the decisions of the Tribunal in identical nature of cases, the decision of the learned CIT(A) to restrict

the disallowance to 12.5% of the non-genuine purchase is fair and reasonable requiring no interference from this forum. Accordingly, we uphold the order of learned CIT(A) by dismissing the grounds raised by the Revenue.

8. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open Court on 25/10/2021.

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

Sd/-
S. RIFAUH RAHMAN
ACCOUNTANT MEMBER

MUMBAI, DATED: 25.10.2021

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

By Order

Assistant Registrar
ITAT, Mumbai