

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES “SMC”, MUMBAI**

BEFORE SHRI SAKTIJIT DEY (JM)

**ITA No. 4279/MUM/2019
Assessment Year: 2010-11**

Shri Lalit Nathmal Shah, 82/84, 2 nd Floor, Kika Street, Gulalwadi, Mumbai - 400004 PAN: ACDPS9498P	Vs.	The ITO – 19(2)(1), Room No. 218, 2 nd Floor, Matru Mandir, Tardeo Road, Grant Road (W), Mumbai - 400007
(Appellant)		(Respondent)

Assessee by : Shri Akash Kumar (AR)

Revenue by : Shri Sanjay Sethi (DR)

Date of Hearing: 14/12/2020
Date of Pronouncement: 18/01/2021

ORDER

PER SAKTIJIT DEY, JM

This is an appeal by the assessee against the order dated 28.05.2019 of learned Commissioner of Income Tax (Appeals)-30, Mumbai for the assessment year 2010-11.

2. The dispute in the present appeal is confined to the addition/disallowance made on account of non genuine purchases.

3. Briefly the facts are, the assessee an individual is stated to be engaged in the business of trading in ferrous and non-ferrous metals. For the assessment year under dispute, the assessee filed his return of income on 25.09.2010 declaring total income of Rs. 2,49,903/-. Initially, the return of income filed by the assessee was processed u/s 143(1) of the Act. Subsequently, on the basis of information received from the Sales Tax Department, Govt. of Maharashtra through DGIT (Inv.), Mumbai that purchases worth Rs. 1,05,57,140/- claimed to have been made during the year from four parties are non genuine, the

Assessing Officer reopened the assessment u/s 147 of the Act. During the assessment proceedings, the Assessing Officer found that as per the information available on record the concerned selling dealers from whom the assessee claimed to have purchased the goods were identified as hawala operators providing accommodation bills. Therefore, he called upon the assessee to prove the genuineness of the purchases. In response to the query raised by the Assessing Officer, though, the assessee furnished some documentary evidences such as copies of ledger accounts, purchase invoices, bank statement, documentary evidence, payment made through cheque to the selling dealers, sale invoices etc, however, the Assessing Officer was not satisfied with them. Further, he observed, notice issued u/s 133(6) of the Act to the selling dealers for verifying the genuineness of purchases returned back unserved. Therefore, the Assessing Officer treated the purchases as non-genuine. However, relying upon a decision of the Hon'ble Gujarat High Court in case of CIT vs. Simit P Sheth, 356 ITR 451 (Guj), he disallowed 12.5% of the alleged non genuine purchases, thereby, making an addition of Rs. 13,19,643/-. The assessee contested the aforesaid disallowance by preferring appeal before learned Commissioner (Appeals). In course of the appeal proceedings, learned Commissioner (Appeals) issued show cause notice to the assessee to explain as to why income should not be enhanced. Though, the assessee objected to the proposed enhancement and submitted that no addition/disallowance should be made on account of non genuine purchases, however, learned Commissioner (Appeals) rejecting the submissions of the assessee proceeded to enhance the income of the assessee by disallowing the entire purchases of Rs. 1,05,57,140/-.

4. The learned counsel for the assessee submitted, while deciding identical issue in assessee's own case in assessment year 2011-12, the Tribunal has restricted the disallowance to 5% of the non-genuine purchases. Thus, he submitted, the order passed by the Tribunal in assessee's own case would squarely apply to the present appeal. Hence, disallowance should be restricted to 5% of the non-genuine purchases.

5. The learned Departmental Representative submitted, learned Commissioner (Appeals) has examined the issue in detail and has provided valid reasons why enhancing the income. Thus, he submitted, the order of learned Commissioner (Appeals) should be sustained.

6. I have considered rival submissions and perused the material on record. As far as the facts are concerned, there is no dispute that the assessee is a trader in ferrous and non-ferrous metals. It is also a fact that the genesis of the present disallowance is the information received from sales tax department indicating that certain entities from whom assessee claimed to have purchased goods have been identified as accommodation entry providers. However, the Assessing Officer has acknowledged the fact that the assessee has effected the corresponding sales and has also offered to tax the profit on such sales. In such circumstances, only the profit element embedded in the alleged non genuine purchase can be considered for addition. It is further noted by me, in assessee's own case in assessment year 2011-12 on identical facts and circumstances the Assessing Officer had made disallowance at 12.5% of the non-genuine purchases which was sustained by learned Commissioner (Appeals). However, in further appeal the Tribunal in, ITA No. 1397/Mum/2018 dated 09.09.2019, taking note of the fact that the assessee is dealing in low profit margin items which attract lower rate of tax has restricted the disallowance to 5% of the alleged non genuine purchases. Admittedly, the aforesaid decision of the Tribunal was not available before learned Commissioner (Appeals) when she decided the appeal for the impugned assessment year. Be that as it may, after perusing the order of the Tribunal in assessee's own case in AY 2011-12 (supra), I find that the said decision has been rendered on identical facts and circumstances as involved in the present appeal. Therefore, respectfully following the decision of the coordinate Bench in assessee's own case as referred to above, I direct the Assessing Officer to restrict the disallowance to 5% of the alleged non genuine purchases. Grounds are partly allowed.

In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 18th January, 2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 18/01/2021

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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