



IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.672/Mum./2019
(Assessment Year : 2009-10)

Income Tax Officer
Ward-27(1)(5), Mumbai

..... Appellant

v/s

Shri Jasmin Mulraj Mehta
12, Nand Smruti Plot no.15
Vallabh Baugh Lane Extension
Mumbai 400 077 PAN-AACPM4122B

..... Respondent

C.O. no.13/Mum./2020
(Arising out of ITA no.672/Mum./2019)
(Assessment Year : 2009-10)

Shri Jasmin Mulraj Mehta
12, Nand Smruti Plot no.15
Vallabh Baugh Lane Extension
Mumbai 400 077 PAN-AACPM4122B

..... Cross Objector
(Original Respondent)

v/s

Income Tax Officer
Ward-27(1)(5), Mumbai

..... Respondent
(Original Appellant)

Revenue by : Shri Ashish Kumar
Assessee by : Shri Mehul Shah

Date of Hearing – 30.01.2020

Date of Order – 13.03.2020

ORDER

The captioned appeal by the Revenue and the cross objection by the assessee arise out of order dated 26th November 2018, passed by the learned Commissioner of Income Tax (Appeals)-26, Mumbai, pertaining to the assessment year 2009-10.

2. The dispute in the present appeal is confined to the direction of learned Commissioner (Appeals) to restrict the disallowance on account of non-genuine purchases to 12.5%.

3. Brief facts are, the assessee, an individual, is engaged in the business of supply and reseller of all kinds of Industrial fasteners like Mild Steel, High Tensile Stainless Steel, Brass, Copper, Aluminum, Bolts, Nuts, Washers, Studs, Eye Bolts, Caps Cashe Nut, etc. through his proprietary concern Mehta Enterprises. For the assessment year under dispute, the assessee filed his return of income on 25th September 2009, declaring total income of ₹ 3,77,680. Assessment in case of the assessee was completed under section 143(3) of the Act vide order dated 23rd December 2011 determining the income at ₹ 4,63,557. After completion of the assessment as aforesaid, the Assessing Officer received information from the Sales Tax Department, Government of Maharashtra that purchases worth ₹ 21,76,808, claimed to have been made during the year from five parties are non-genuine. On the basis of such information the Assessing Officer re-opened the assessment under section 147 of the Act. From the material on record, the Assessing Officer found that the concerned parties from whom the assessee claimed to have effected the purchases have been identified as hawala operators by the Sales Tax Department, as they were only providing accommodation bills without

entering into actual sale transaction. Therefore, during the assessment proceedings he called upon the assessee to prove the genuineness of the purchases claimed to have been made through proper documentary evidences. Further, to independently verify the genuineness of purchases, the Assessing Officer issued notices under section 133(6) of the Act calling for certain information. As alleged by the Assessing Officer, all such notices returned back un-served. Though, the assessee furnished purchase bills and some other documents to prove the purchase, however, the Assessing Officer did not find them convincing while observing that the assessee failed to furnish vital evidences like delivery challan, transport bills, etc. Thus, ultimately, the Assessing Officer held that purchases claimed to have been made by the assessee are non-genuine, hence, has to be treated as unexplained expenditure under section 69C of the Act. Having held so, the Assessing Officer proceeded to make the addition of an amount of ₹ 9,41,205, on peak basis. The addition made by the Assessing Officer was contested before the first appellate authority.

4. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) directed the Assessing Officer to restrict the disallowance to 12.5% of the total non-genuine purchases.

5. The learned Departmental Representative submitted, in course of the assessment proceedings, the assessee has failed to prove the genuineness of purchases by furnishing delivery challan, transport bills to show the actual delivery of goods. Further, he submitted, the notices issued under section 133(6) of the Act also returned back unserved thereby raising doubt regarding existence of the selling dealers. Thus, he submitted, in such circumstances, learned Commissioner (Appeals) should have sustained the addition made by the Assessing Officer.

6. The learned Authorised Representative submitted, the fact that the Assessing Officer has not added the entire purchases but has made addition on peak basis, to some extent, proves that the purchases are genuine. Further, he submitted, considering the fact that the applicable Value Added Tax (VAT) rate is 4% and the assessee had already declared gross profit of 5.5%, the disallowance @ 12.55 would be high and excessive.

7. We have considered rival submissions and perused the material on record. Though, it may be a fact that the assessee has failed to furnish documentary evidences to the satisfaction of the Assessing Officer to prove the genuineness of purchases, however, it is a fact that the sales effected by the assessee have not been doubted. For this reason alone, the Assessing Officer has not disallowed the entire

purchases, but has added on peak basis which has been reduced to 12.5% of the non-genuine purchases by learned Commissioner (Appeals). At the same time, assessee's contention that no addition at all can be made is not acceptable considering the fact that he has failed to prove the source of purchases through cogent evidence. Therefore, after considering all the relevant facts and material on record, though, we agree with the learned Commissioner (Appeals) that disallowance has to be made @ 12.5% of the non-genuine purchases, however, the assessee should get benefit of the gross profit already declared. In other words, the addition on account of non-genuine purchases should be restricted to 12.5% less the gross profit already declared by the assessee.

8. In the result, Revenue's appeal is dismissed and assessee's cross objection is partly allowed.

Order pronounced in the open Court on 13.03.2020

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 13.03.2020

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