

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

Before Shri Shamim Yahya, Accountant Member

ITA No.1063/Mum/2017
Assessment Year : 2011-12

ITO Ward 1(1) Kalyan	Vs.	Alpesh Suresh Jain 431, Chafa Apartments Kasar Ali Ajay Nagar, Bhiwandi 421 302 PAN AENPJ8257P
(Appellant)		Respondent)

Appellant By : Shri Satyanarayana Raju
Respondent By : None

Date of Hearing :16.05.2017

Date of Pronouncement : 07.06.2017

ORDER

This is an appeal by the Revenue, wherein the Revenue is aggrieved that the learned CIT-A has not sustained hundred percent disallowance on account of bogus purchases.

2. The Assessing Officer in this case has made hundred percent addition on account of bogus purchase amounting to ₹. 37,30,424/-. Upon assessee's appeal, learned CIT(A) has noted that the sales have not been doubted. Accordingly, placing reliance upon several case laws and upon the facts of the case he sustained 15% disallowance out of the bogus purchases.

3. Against above order, assessee is in appeal before the ITAT. I have heard the learned Departmental Representative and perused the records. None appeared on behalf of the assessee despite notice.

4. I find that in this case the sales have not been doubted it is settled law that when sales are not doubted, hundred percent disallowance for bogus purchase cannot be done. This proposition is supported from Hon'ble Jurisdictional High Court decision in the case of Nikunj Eximp Enterprises. However, the facts of the present case indicate that assessee has made purchase from the grey market. Making purchases through the grey market gives the assessee sailings on account of non-payment of tax and others at the expense of the exchequer. In such situation in my considered opinion on the facts and circumstances of the case the 15% disallowance out of the bogus purchases sustained by the learned CIT(A)meets the ends of justice.

5. Learned departmental representative has placed reliance upon a Hon'ble Gujarat High Court decision wherein, hundred percent disallowance of bogus purchase has been upheld. Special Leave Petition against this order has been dismissed by the Hon'ble Apex Court. I find that dismissal of SLP by a non speaking order by the Hon'ble apex court doesn't merge the order of the Hon'ble High Court with that of the apex court. Moreover such disallowances depend upon the facts and circumstances of the case as expounded by Hon'ble Jurisdictional High Court in the case of Nikunj Eximp Enterprises. Accordingly, I uphold the order of the learned CIT(A).

6. In the result, this appeal filed by the Revenue stands dismissed

Order pronounced in the open court on this day of 7th June 2017.

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

Mumbai, Dated : 7th June, 2017.
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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'SMC' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai