

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)

I.T.A. No. 2459/Mum/2018 (Assessment Year 2009-10)
C.O.No. 330/Mum/2018 (Assessment Year 2009-10)

M/s. Krishna Mobile & Accessories Limited C/o. Mr. Amit Singhanian 1-Nivetia Compound Nivetia Road, Malad (E) Mumbai-400097.	Vs.	DCIT, Circle-12(3)(1) Aayakar Bhavan M.K. Road Mumbai-400 020.
(Appellant)		(Respondent)

I.T.A. No. 5892/Mum/2017 (Assessment Year 2009-10)

DCIT, Circle-12(3)(1) Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Krishna Mobile & Accessories Limited C/o. Mr. Amit Singhanian 1-Nivetia Compound Nivetia Road, Malad (E) Mumbai-400097.
(Appellant)		(Respondent)

PAN : AACCK7485L

Assessee by	Shri Anant N. Pai
Department by	Shri Manoj Kumar Singh
Date of Hearing	31.7.2019
Date of Pronouncement	9.8.2019

ORDER

Per Shamim Yahya (AM) :-

These are cross appeals by the assessee and revenue and Cross Objection by assessee arising out of the order of the learned CIT-A dated 1.6.2017 pertaining to assessment year 2009-10.

2. The Id Counsel of the assessee has not pressed assessee's appeal hence the same is dismissed as not pressed.

3. In the CO one issue raised pertains to challenge of reopening. Ld counsel of assessee has not pressed the same, hence it is dismissed as not pressed.
4. The issue in dispute is disallowance on account of bogus purchase.
5. Brief facts of the case are that assessee in this case is engaged in the business of import and resale of mobile and mobile accessories. The Assessment in this case was reopened upon receipt of information from the sales tax Department that assessee has made bogus purchases. The assessee submitted the purchase vouchers and the payments were made through banking channel. However the suppliers were not produced before the assessing officer. Sales in this case were not doubted.
6. The income tax officer in this case has made 12.5% addition on account of bogus purchase resulting in disallowance of Rs. 2,58,27,025/-. Upon assessee's appeal Id CIT-A reduced the same to 8% at Rs. 1,65,29,296/-.
7. Against above order assessee and revenue are in appeal before the ITAT. We have heard both the counsel and perused the records.
8. Upon careful consideration we find that assessee has provided the documentary evidence for the purchase. Adverse inference have been drawn due to the inability of the assessee to produce the suppliers, we 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. The rationale being no sales is possible without actual purchases. This proposition is supported from honourable jurisdictional High Court decision in the case of Nikunj Eximp enterprises (in writ petition no 2860, order dt 18.6.2014). In this case the honourable High Court has upheld hundred percent allowance for the purchases said to be bogus when sales are not doubted. However in that case all the supplies were to government agency.
9. In the present case the facts of the case indicate that assessee has made purchase from the grey market. Making purchases through the grey market

gives the assessee savings on account of nonpayment of tax and others at the expense of the exchequer. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, we find that as held by honourable High Court of Bombay in its recent judgement in the case of principle Commissioner of income tax versus M Haji Adam & Co (ITA number 1004 of 2016 dated 11/2/2019 in paragraph 8 there off) ,the addition in respect of bogus purchases is to be limited to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchases.

10. We respectfully following the aforesaid judgement of the honourable High Court set aside the matter to the file of the assessing officer with the direction to restrict the addition as regards the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchases. Needless to add the assessee should be granted adequate opportunity of being heard. Ld counsel of the assessee fairly agreed to the above proposition.

11. In the result assessee's CO is partly allowed, rest of the appeals stand dismissed.

Order has been pronounced in the Court on 9.8.2019.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 9/8/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

