

THE INCOME TAX APPELLATE TRIBUNAL  
"B" Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Sandeep Gosain (JM)

I.T.A. No. 4128/Mum/2018 (Assessment Year 2011-12)

Bhave Engineering Pvt. Ltd. C/o. D.C. Bothra & Co. LLP (CA) (formerly known as D.C. Bothra & Co.) 297, Tardeo Road, Wille Mansion, 1 <sup>st</sup> Floor, Opp Bank of India, Nana Chowk Mumbai-400 007.  PAN : AAACB7065K (Appellant)	Vs.	ITO Ward 1(1) Mohan Plaza Wayale Nagar Khadak Pada Kalyan West Pincode-421 301.  (Respondent)
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Assessee by	Shri Rajkumar Singh
Department by	Shri Ashish Kumar
Date of Hearing	22.7.2019
Date of Pronouncement	29.8.2019

ORDER

Per Shamim Yahya (AM) :-

This is an appeal by the assessee wherein the assessee is aggrieved that the learned CIT(A) has erred in sustaining 12.50% disallowance on account of bogus purchases, vide order dated 20.3.2018 for A.Y. 2011-12.

2. Brief facts of the case are that the assessee is engaged in the business of manufacturing of metal wires and ropes. Information was received from the Sales Tax Department that assessee has made bogus purchases. The assessment was accordingly reopened.

3. The Assessing Officer in this case has made 100% addition on account of bogus purchases amounting to Rs. 1,57,63,178/-. Upon assessee's appeal learned CIT(A) reduced the same to 12.50%.

4. Against the above order the assessee is in appeal before the ITAT.

5. We have heard both the counsel and perused the records. Learned Counsel of the assessee contended that the disallowance relates to trading business of the assessee and Hon'ble Bombay High Court decision in the case of M/s. Mohommad Haji Adam & Co. (ITA no. 1004 of 2016 dated 11.2.2019) may be followed and disallowance be restricted to difference in gross profit in genuine and bogus purchases.

6. Upon careful consideration, we find that the assessee has provided the documentary evidence for the purchase. Adverse inference has been drawn due to inability of the assessee to produce the suppliers. We note that in this case the sales have not been doubted. In the present case the facts of the case indicates that the assessee has made purchase from the grey market. Making purchases through the grey market gives the assessee savings on account of non-payment of tax and others at the expenses of the exchequer. In such situation in our considered opinion on the facts and circumstances of the case 12.5% disallowance out of the bogus purchases meets the end of justice. However, in this regard learned Counsel of the assessee wrongly stated that the disallowance relates to assessee's trading business. We note that there is no trading business reflected in profit and loss account and the tax audit report. The profit and loss account does not show any trading activity. The tax audit report also mentioned the business of the assessee as manufacturing of metal wires and ropes. Thus it is amply clear that the learned counsel of the assessee has tried to mislead the Tribunal. Since the decision in the case of M/s. Mohommad Haji Adam & Co. (supra) is applicable to trading purchase the same is not applicable in this case. Hence, we uphold the order of learned CIT(A).

7. In the result, appeal filed by the assessee stands dismissed.  
Order has been pronounced in the Court on 29.8.2019.

Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 29/8/2019

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//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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