

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

Before Shri Shamim Yahya, Accountant Member

ITA No.4496/MUM/2018
Assessment Year: 2011-12

Dilip Metal Syndicate, 175 Kika Street, Gulalwadi, Mumbai- 400 004.	Vs.	The ITO Ward 19(1)(4) Mumbai.
PAN AAAFD0953H (Appellant)		(Respondent)

Appellant By : Shri Rajesh Chamaria
Respondent By : Shri Chaitanya Anjaria

Date of Hearing :03.07.2019	Date of Pronouncement : 23.08.2019
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ORDER

This is an appeal by the assessee directed against order of learned CIT(A)-29, Mumbai, dated 18.04.2018, pertaining to assessment year 2011-12.

2. The grievance of the assessee is that the learned CIT-A has erred in sustaining 12.5% disallowance on account of bogus purchases, vide order dated 18.04.2018 for A.Y. 2011-12.

3. The brief facts of the case are that assessee in this case is engaged in the business of trading in metal. 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.

4. The Assessing Officer in this case has made 12.5% addition on account of bogus purchase resulting in disallowance of Rs 8,60,594/-. Upon assessee's appeal

Id CIT(A) confirmed the same. Against above order assessee is in appeal before the ITAT.

5. I have heard both the counsel and perused the records. Upon careful consideration I find that assessee has provided the documentary evidence for the purchase. Adverse inference has been drawn due to the inability of the assessee to produce the suppliers. 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. The rationale being no sales is possible without actual purchases. This proposition is supported from Hon'ble Jurisdictional High Court decision in the case of Nikunj Eximp Enterprises Pvt. Ltd. (in Writ Petition No 2860, order dt 18.6.2014). In this case the Hon'ble 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

6. In the present case, the facts indicate that 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 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 Hon'ble High Court of Bombay in its recent judgment in the case of Principal Commissioner of Income tax Vs. M Haji Adam & Co (ITA number 1004 of 2016 dated 11/2/2019, in paragraph 8 thereof) 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.

7. I respectfully following the aforesaid judgment of the Hon'ble 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. Learned counsel of the assessee fairly agreed to this proposition.

8. In the result assessee's appeal is partly allowed.

Order pronounced in the open court on this day of 23rd August, 2019.

**Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER**

Mumbai, Dated : 23rd August, 2019.
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Copy of the Order forwarded to :

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

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai