

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

ITA Nos.4795 & 4796/Mum/2018
(Assessment Years: 2010-11 & 2011-12)

Pradeep N. Shah Room No. 216, 2 nd Floor, Seth Virchand Bldg., 3 rd Panjarapole Lane, Mumbai-400 004	Vs.	Income Tax Officer 19(2)(5) Mumbai
PAN/GIR No. AWUPS 7526 D		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Lalit Kumar Chhajed
Respondent by	:	Shri Chaitanya Anjaria
Date of Hearing	:	28.08.2019
Date of Pronouncement	:	11.09.2019

ORDER

Per Shamim Yahya, A. M.:

These are appeals by the assessee wherein the assessee is aggrieved that the order of the learned Commissioner of Income Tax (Appeals) ('Id. CIT-A' for short) has erred in sustaining 12.5% disallowance on account of bogus purchase by common order dated 13.06.2018 for the Assessment Years ('A.Y.' for short) 2010-11 and 2011-12.

2. Brief facts of the case are that the assessee is engaged in the business of metal trading. The information was received from the Sales Tax Department that the assessee is making bogus purchases. The assessment was accordingly reopened.

3. The Assessing Officer ('A.O.' for short) in this case has made 12.5% addition on account of bogus purchase amounting to Rs.11,68,038/- for A.Y. 2010-11 and Rs.14,34,093/- for A.Y. 2011-12. Upon the assessee's appeal, the Id. CIT(A) confirmed the same.

4. Against the above order, the assessee is in appeal before us.
5. We have heard both the counsel and perused the records.
6. Upon careful consideration we find that the 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. 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 the government agency. In the present case, the facts of the case indicate 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 expense of the exchequer. In such situation, this ITAT in assessee's own case for A.Y. 2009-10 vide order dated 08.02.2019 has directed that the disallowance should be restricted to 4%. Respectfully following the precedent in assessee's own case, we direct that the disallowance on account of bogus purchase should be restricted to 4% . The ld. Counsel of the assessee fairly agreed to the above.

7. In the result, the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 11.09.2019

Sd/-

(Amarjit Singh)
Judicial Member

Mumbai; Dated : 11.09.2019
Roshani, Sr. PS

Sd/-

(Shamim Yahya)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai