

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

I.T.A. No. 4662/Mum/2018 (Assessment Year 2009-10)

Mr. Aslam Usman Khan 5 th Floor, Noorani Manzil Room No. 13, Navroji Hill Road No. 2, Mumbai-400009. PAN : AAEPK0863H (Appellant)	Vs.	ITO Ward 17(1)(2) Room No. 116 Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	None
Department by	Shri Chaitanya Anjaria
Date of Hearing	11.7.2019
Date of Pronouncement	06.9.2019

O R D E R

This is an appeal by the assessee wherein the assessee is aggrieved that the learned CIT-A has erred in sustaining disallowance of Rs. 6,99,563/- on account of bogus purchases of Rs. 12,70,131/-.

2. Brief facts of the case are that assessee is engaged in the business of manufacturer of piped gas equipments. Information was received from the sales tax Department that assessee has that in bogus purchases. The assessment was accordingly reopened. The assessing officer in this case has made disallowance of Rs. 26,99,563/- on account of bogus purchase amounting to Rs. 12,70,131/- being peak investment.

3. Upon assessee's appeal Id CIT A confirmed the same.

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

5. Up on 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 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. 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 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 12.5 % disallowance out of the bogus purchases meets the end of justice.

6. In the result, appeal filed by the assessee stands partly allowed.
Order has been pronounced in the Court on 6.9.2019.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 6/9/2019

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//

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai