

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

I.T.A. No. 4070/Mum/2018 (Assessment Year 2009-10)

M/s. Sandeep Agarwal HUF Shiv Om, Plot No. 40 Sector 12, Vashi Navi Mumbai-400 703. PAN : AAFHA7534N (Appellant)	Vs.	ITO Ward 28(3)(1) Mumbai (Respondent)
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Assessee by	None
Department by	Shri Chaitanya Anjaria
Date of Hearing	15.7.2019
Date of Pronouncement	6.9.2019

ORDER

This is an appeal by the assessee wherein the assessee is aggrieved that the learned CIT-A has erred in sustaining 12.5% disallowance on account of bogus purchases, vide order dated 19.3.2018 pertaining to assessment year 2009-10.

2. Brief facts of the case are that assessee in this case is engaged in the business of trading in steel. 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.

3. The income tax officer in this case has made 12.5% addition on account of bogus purchase resulting in disallowance of Rs. 3,33,540/-.

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

5. 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.

6. 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 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.

7. 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. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, I 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 Adarn & 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.

8. I 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.

9. In the result assessee's appeal is 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//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS