

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

I.T.A. No. 4417/Mum/2018 (Assessment Year 2009-10)  
I.T.A. No. 4430/Mum/2018 (Assessment Year 2010-11)

Smt. Ramila Jethmal Bothra 86, Badrikaashram, 1 <sup>st</sup> Floor 1 <sup>st</sup> Khetwadi Lane Mumbai-400 004.  PAN : ACFPB2862A	Vs.	ITO-19(3)(1) Matru Mandir Nana Chowk Tardeo Road Mumbai-400007.
(Appellant)		(Respondent)

Assessee by	Shri Vimal PUnamia
Department by	Shri Chaitanya Anjaria
Date of Hearing	9.7.2019
Date of Pronouncement	23.9.2019

ORDER

These are appeals 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, for assessment years 2009-10 & 2010-11.

2. Brief facts of the case are that assessee in this case is engaged in trading in ferrous and non ferrous 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.

3. The income tax officer in this case has made 12.5% addition on account of bogus purchase resulting in disallowance of Rs. 7,49,170/- for A.Y. 2010-11 and Rs. 4,96,404/- for A.Y. 2009-10. Upon assessee's appeal Id CIT(A) confirmed the same.

4. Against above order assessee is in appeal before the ITAT. I have heard both the counsel and perused the records.

5. 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. 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 my considered opinion on the facts and circumstances of the case are disallowance of 12.5% out of the bogus purchases meets the end of justice. However in this regard learned Counsel of the assessee has submitted that if the profit earned on account of the bogus purchases is to be taxed gross profit already declared should be reduced from the disallowance at the rate of 12.5%, as otherwise there will be prejudice to the assessee.

6. Upon careful consideration I find considerable cogency the submission of the learned Counsel of the assessee. Hence, I direct the Assessing Officer to make the disallowance at the rate of 12.5% of the bogus purchase as reduced by the gross profit already declared by the assessee. Learned Counsel of the assessee fairly agreed to the above proposition.

7. In the result, these assessee's appeals stand partly allowed.  
Order has been pronounced in the Court on 23.9.2019.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 23/9/2019

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