

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai**

**Before Shri Shamim Yahya, Accountant Member
and Shri Ram Lal Negi, Judicial Member**

ITA Nos. 4860 & 4861/Mum/2018
(Assessment Years: 2009-10 & 2010-11)

Shri Ashok Panchand Mehta (HUF)
41, Gautam Apartments
Juhu Road, Santacruz (W)
Mumbai 400054

Income Tax Officer-22(1)(2)
Room No. 313, Piramal
Chamber, Lalbaug
Mumbai 400012

PAN – AAIHA3361C

Appellant

Respondent

Appellant by: Ms. Ruchi M. Rathod
Respondent by: Shri Chaitanya Anjaria

Date of Hearing: 20.08.2019
Date of Pronouncement: 05.11.2019

ORDER

Per Shamim Yahya, AM

These are appeals by the assessee wherein the assessee is aggrieved that the learned CIT(A) has erred in sustaining 12.5 percent disallowance on account of bogus purchases, vide common order dated 29.06.2018 pertaining to assessment years 2009-10 & 2010-11.

2. Brief facts of the case are that assessee in this case is engaged in the business of trading in chemicals and solvent. 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. The Income Tax Officer in this case has made 12.5 percent addition on account of bogus purchases resulting in disallowance of ₹15,36,224/- in A.Y. 2009-10 and ₹3,18,474/- in A.Y. 2010-11. Upon assessee's appeal the learned CIT(A) confirmed the same. Against above order assessee is in appeal before the ITAT.

3. I have heard both the counsel and perused the records. Upon careful consideration I find that assessee has provided the documentary evidence for the purchases. Adverse inference has been drawn due to the inability of the assessee to produce the suppliers. Assessing Officer has issued notices to the suppliers which were returned unserved. The assessee also did not produce any information. 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 by the Hon'ble Jurisdictional High Court decision in the case of Nikunj Eximp Enterprises (in Writ Petition No 2860, order dated 18.06.2014). 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. 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, I find that as held by Hon'ble High Court of Bombay in its recent judgment in the case of Principle Commissioner of Income Tax vs. M Haji Adam & Co (ITA No. 1004 of 2016 dated 11.02.2019 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.

4. I respectfully following the aforesaid judgement 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 that the assessee should be granted adequate opportunity of being heard.

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

Order pronounced in the open court on 5th November, 2019.

Sd/-
(Shamim Yahya)
Accountant Member

Mumbai, Dated: 5th November, 2019

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -34, Mumbai*
4. *The Pr.CIT - 22, Mumbai*
5. *The DR, "SMC" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

n.p.