

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

Before Shri Shamim Yahya, Accountant Member

ITA Nos. 4856 & 4857/Mum/2018
(Assessment Years: 2009-10 & 2010-11)

M/s. Apratim Equipments Gala No. A-19, Near W-52 MIDC Phase II, Dombivili (E) Thane 421203	Vs.	Income Tax Officer-3(1) 2nd Floor, Rani Mansion Murbad Road Kalyan (West) - 421301
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PAN – AAOFA5444N

Appellant

Respondent

Appellant by: Shri Madhav M. Khisti
Respondent by: Shri Chaitanya Anjaria

Date of Hearing: 20.08.2019
Date of Pronouncement: 05.11.2019

ORDER

Per Shamim Yahya, AM

These appeals filed by the assessee are directed against the order of the CIT(A)-1, Thane dated 29.06.2018 and it relate to assessment years 2009-10 & 2010-11.

2. The assessee is aggrieved that the learned CIT(A) has erred in sustaining 100% disallowance on account of bogus purchase.

3. Brief facts of the case are that the assessee in this case is engaged in the business of manufacturing of engineering goods. The assessments in these cases were reopened upon receipt of information from the Sales Tax Department that the 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.

4. The Income Tax Officer in this case had made 100% addition on account of bogus purchases resulting in disallowance of ₹2,08,287/- for

A.Y. 2009-10 and ₹9,77,691/- for A.Y. 2010-11. Upon assessee's appeal the learned CIT(A) confirmed the same.

5. Against the above order the assessee is in appeal before the ITAT. I have heard both the counsel and perused the record. Upon careful consideration I 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. I find that in this case the sales or other workings 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 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 purchases from the grey market. Making purchases through grey market gives the assessee savings on account of non-payment of tax and others at the expenses of the exchequer. In my considered opinion, on the facts and circumstances of this case, 12.5% out of the bogus purchase would meet the end of justice. I direct accordingly. The learned counsel for the assessee fairly agreed to the above.

6. 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) -1, Thane*
- 4. The Pr.CIT - 1, Thane*
- 5. The DR, "SMC" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

n.p.