

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

Before Shri Shamim Yahya, Accountant Member

ITA Nos. 4827 to 4830/Mum/2018

(Assessment Years: 2012-13, 2009-10, 2011-12 & 2007-08)

Shri Karan Ramchand Morani
A/2, 6th Floor, Lok Nirman
15th Road, Khar (W)
Mumbai 400052

Income Tax Officer-22(2)(1)
Piramal Chambers
Vs. 3rd Floor, Parel
Mumbai 400013

PAN – AFIPM1051Q

Appellant

Respondent

Appellant by: Shri Neelkhanth Khandelwal
Respondent by: Shri Chaitanya Anjaria

Date of Hearing: 21.08.2019

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 25% disallowance on account of bogus purchases, vide common order dated 31.05.2018 pertaining to assessment years 2007-08, 2009-10, 2011-12 & 2012-13.

2. Brief facts of the case are that the assessee in this case is engaged in the business of manufacturing and trading of jewellery. Assessment in this case was reopened upon receipt of information from Departmental Investigation Wing for investigation in Bhanwarlal Jain Group that assessee has made bogus purchases. The assessee submitted the purchase vouchers and payments were made through banking channel. The suppliers also responded to the notice of the Assessing Officer. Sales in this case were not doubted. The Income Tax Officer in this case has made 25% addition on account of bogus purchase resulting in disallowance of ₹7,21,397/- in A.Y. 2007-08, ₹1,24,980/- in A.Y. 2009-10, ₹3,76,975/- in A.Y. 2011-12 and ₹9,20,390/- in A.Y. 2012-13.

3. Upon appeals filed by the assessee the learned CIT(A) has confirmed the same. Against the above order the assessee is in appeal before the ITAT.

4. I have heard both the learned counsel and perused the records. Upon careful consideration I find that the assessee has provided the documentary evidence for the purchase. The suppliers have also responded to the notice of the AO and submitted their income tax returns and bank statements. 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, 100% 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 100% 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 the assessee has made purchases from grey market. Making purchases through the grey market gives the assessee 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, the learned counsel for the assessee relied upon the order of this Tribunal in the case of M/s. Dinal Diamonds, ITA No. 6102/Mum/2017 for A.Y. 2007-08 order dated 05.03.2019 wherein the Tribunal held as under: -

“ 10. Upon careful consideration we find that the assessee has provided the documentary evidence for the purchase. Adverse inference has been drawn by the A.O. on the investigation wing action on Gautam Jain group. No independent enquiry has been conducted by the A.O. himself. We find that in this case the sales have not been doubted. It is settled law that when sales are not doubted, 100% disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from the Hon'ble 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 Hon'ble High Court has upheld 100%

allowance for the purchases said to be bogus when sales are not doubted. However, in that case all the supplies were to the 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 our considered opinion, on the facts and circumstances of the case, 3% disallowance out of the bogus purchases meets the end of justice, as reasoned by the ld. CIT(A) above. The case law quoted by the Revenue in the grounds of appeal is a dismissal of SLP simplicitor by the Hon'ble Apex Court. It does not meagre the order of the Hon'ble Apex Court with that."

5. I find that the ratio of the above decision can be followed here. The suppliers in this case have also responded to AO's notice. The AO has made some vague observations in rejecting assessee's claim. Hence, following the above precedent I direct that disallowance should be restricted to 3% of bogus purchases.

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) -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.