

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, AM**

ITA No. 4512/Mum/2018  
(Assessment Year: 2011-12)

Pushpa Nareshkumar Dhanania 24, Saraswati Sadan, 1 <sup>st</sup> Floor, 113, Keshvaji Naik Road, Mumbai-400 009	Vs.	ITO, Ward-17(2)(5), Mumbai
PAN/GIR No. ADWPD 7778 D		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Appellant by</b>	:	Shri Haresh P. Shah
<b>Respondent by</b>	:	Shri Chaitanya Anjaria

<b>Date of Hearing</b>	:	19.08.2019
<b>Date of Pronouncement</b>	:	06.11.2019

ORDER

Per Shamim Yahya, A. M.:

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 02.05.2018 pertaining to assessment year 2011-12.

2. Brief facts of the case are that assessee in this case is engaged in the business of trading in pipe fittings.
3. 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.

4. The Income Tax Officer in this case has made 12.5% addition on account of bogus purchase resulting in disallowance of Rs.4,65,144/-. Upon the assessee's appeal, the Id.CIT(A) confirmed the same.

5. Against the above order, the assessee is in appeal before the ITAT.

6. I have heard both the counsel and perused the records. 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 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 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. 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 Bombay High Court in its recent judgment in the case of Principle Commissioner of income tax versus M Haji Adam & Co. (in ITA No. 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.

7. I respectfully following the aforesaid judgment 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 the assessee should be granted adequate opportunity of being heard. Similar order was passed by ITAT in assessee's own case for A.Y. 2009-10 vide order dated 31.07.2019.

8. In the result, the assessee's appeal is partly allowed.

*Order pronounced in the open court on 06.11.2019*

Sd/-

(Shamim Yahya)  
Accountant Member

Mumbai; Dated : 06.11.2019

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai