

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

I.T.A. No. 4862/Mum/2018 (Assessment Year 2008-09)  
I.T.A. No. 4863/Mum/2018 (Assessment Year 2009-10)

Amar Diamond Tools 1 <sup>st</sup> Floor, Shiv Darshan Building, Mumbai Pune Road Mumbra, Thane (West) Maharashtra-400 612.  PAN : AAHFA7543D	Vs.	ITO Ward 1(1) Room No. 23, B Wing 6 <sup>th</sup> Floor, Ashar IT Park, Road No. 16Z Wagle Industrial Estate, Thane (West) Maharashtra-400 604.
(Appellant)		(Respondent)

Assessee by	Ms. Pritama Pokhrana
Department by	Shri Chaitanya Anjaria
Date of Hearing	22.8.2019
Date of Pronouncement	18.11.2019

ORDER

These appeals by the assessee are directed against common order of learned CIT(A) dated 8.6.2018 pertain to A.Y. 2008-09 & 2009-10.

2. In both the appeals the assessee is aggrieved that learned CIT(A) erred in sustaining 12.5% disallowance out of bogus purchases.

3. Brief facts are that the assessee is engaged in manufacturing and trading in industrial tools. The assessment was reopened pursuant to search action in the Jain group, wherein it was found that bogus accommodation entries were being provided. The Assessing Officer based his reassessment on the statement of Shri Rajendra Jain in the case of Jain group case. Accordingly, impugned purchases were held to be bogus and disallowance @ 12.5% was done. Amount disallowed was Rs. 5,24,496/- for A.Y. 2008-09 and Rs. 90,726/- for A.Y. 2009-10.

4. Upon assessee's appeal learned CIT(A) confirmed the addition. Against this order the assessee is in appeal before the ITAT.

5. I have heard both the counsel and perused the record. Learned Counsel of the assessee contended that the assessee has supplied all necessary details i.e. purchase bills, sale bills and bank statements. He submitted the affidavits from suppliers were also submitted. It is also claimed during inquiry u/s. 136(6) that proprietary concerns of above suppliers also confirmed these purchases and submitted ledger account. Learned counsel further submitted that the sales have not at all being doubted. Learned counsel claimed that no disallowance is called for, as assessee has offered adequate gross profit on these transactions.

6. Upon careful consideration, I note that learned counsel claimed that the assessee has also already shown sufficient gross profit hence no disallowance is required. Upon careful consideration I find that assessee has provided the documentary evidence for the purchase. Even the impugned suppliers have responded to 133(6) notices and confirmed the purchases. 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 I find that all the details for purchases have been supplied. The impugned suppliers also responded to the notice u/s. 133(6). Hence, addition is solely made on the basis of findings of search in the case of Rajendra Jain Group dehorse any independent finding by the Assessing Officer. Moreover, assessee's claim is that the assessee also shown sufficient

gross profit and when sales have not doubted, no disallowance is called for. I find sufficient cogency in this submission. Hence, addition in this case is directed to be deleted.

7. In the result, both the appeals are allowed.

Order has been pronounced in the Court on 18.11.2019.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 18/11/2019

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