

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.

3. The Income Tax Officer in this case has made 12.5% addition on account of bogus purchase resulting in disallowance of Rs.7,64,697/-. Upon assessee's appeal, learned CIT(A) confirmed the same. Against above order, assessee is in appeal before the Tribunal.

4. We have heard both the counsel and perused the records. Upon careful consideration, we find that assessee has provided the documentary evidence for the purchase. Adverse inference has been drawn due to the inability of assessee to produce the suppliers. We 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 *Nickunj Eximp Enterprises (P.) Ltd. (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.

5. In the present case, the facts of the case indicate that assessee has made purchases 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 profit element embedded in making of such bogus/unsubstantiated purchases by the

assessee, I find that it is the submission of the learned counsel for the assessee that it will be double prejudice if the gross profit already declared @ 6.09% is not reduced from the standard 12.5% being disallowed on account of bogus purchases.

6. Upon careful consideration, we find considerable cogency in the above submissions. Accordingly, we direct that disallowance in this case be restricted to 12.5% of the bogus purchases as reduced by the gross profit @ 6.09% already declared by the assessee. The learned counsel for the assessee fairly agreed to the above.

7. In the result, assessee's appeal stands partly allowed.

Order pronounced in the open court on 25th November, 2019.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai, Date : 25th November, 2019

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai