

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA NO. 3338/MUM/2018 : **A.Y : 2009-10**

Kailash Ghewarchand Jain
Room No. 3, Bordi Bunglow,
94, C.P. Tank Road,
Mumbai 400 004. (Appellant)
PAN : AAEPJ4995R

Vs. ITO – 19(2)(2),
Mumbai (Respondent)

Appellant by : **Shri Neel Khandelwal**
Respondent by : **Shri Chaitanya Anjaria**

Date of Hearing : **26/08/2019**

Date of Pronouncement : **19/11/2019**

ORDER

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 20.04.2018 pertaining to assessment year 2009-10.

2. The brief facts of the case are that the assessee in this case is engaged in the business of ferrous and non-ferrous metals. 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 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 purchases resulting in disallowance of Rs.11,54,057/-. Upon assessee's appeal, the learned CIT(A) confirmed the same. Against the above order, assessee is in appeal before the Tribunal.

4. I have heard both the counsels and perused the records. Upon careful consideration, I find that 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, 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 agencies.

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 as held in para 8 of recent judgment of Hon'ble High Court of Bombay in the case of *PCIT vs M. Haji Adam & Co.*, ITA No. 1004 of 2016 dated 11.02.2019, 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.

6. I respectfully following the aforesaid judgment of the Hon'ble High Court set-aside the matter to the file of 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.

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

Order pronounced in the open court on 19th November, 2019.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai, Date : 19th November, 2019

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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