

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

**Before Shri Shamim Yahya, Accountant Member  
and Shri Pawan Singh, Judicial Member**

**ITA Nos. 5313 & 5314/Mum/2018**  
(Assessment Years: 2009-10 & 2011-12)

Income Tax Officer-3(4)  
2nd Floor, Rani Mansion  
Murbad Road  
Kalyan (W) - 421301

Shri Hitesh Rameshchandra  
Thakkar  
Vs. Sai Kunj, Sai Park, Shivaji Path  
Kalyan (W) - 421301

PAN – AAIPT0778J

**Appellant**

**Respondent**

Appellant by: Shri Akhtar H. Ansari  
Respondent by: None

Date of Hearing: 03.10.2019  
Date of Pronouncement: 20.12.2019

**ORDER**

**Per Shamim Yahya, AM**

These are appeals by the Revenue wherein the Revenue is aggrieved that the learned CIT(A) has deleted part of the 100% addition by sustaining only 12.5 % disallowance on account of bogus purchases, vide common order dated 08.06.2018 pertaining to assessment years 2009-10 & 2011-12.

2. The assessee in this case is engaged in the business of manufacturing of pharmaceutical chemicals. The assessment was reopened upon information from Sales Tax Department that the assessee has made purchase from bogus dealers. The AO in this case has made 100% addition on account of bogus purchase amounting to ₹44,554 for A.Y. 2009-10 and ₹2,70,907/- for A.Y. 2011-12.

3. Up on assessee's appeal learned CIT(A) has noted that the sales has not been doubted. Accordingly, placing reliance upon several case laws and up on the facts of the case he sustained 12.5% disallowance out of the

bogus purchases. Against above order Revenue is in appeal before the ITAT.

4. We have heard both the counsel and perused the records. 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 decision of the Hon'ble Jurisdictional High Court 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 hundred percent allowance for the purchases said to be bogus when sales are not doubted. However the facts of the present 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 the 12.5% disallowance out of the bogus purchases done by the learned CIT(A) meets the end of justice. Accordingly we uphold the order of learned CIT(A).

5. The decision in the case of N.K. Proteins Ltd, Tax Appeal No. 242 of 2003 dated 20.06.2016 referred by Revenue in grounds of appeal has already been distinguished by Hon'ble Bombay High Court in the case of M. Haji Adam & Co. in ITA No. 1004 of 20016 dated 11.02.2019.

6. In the result these appeals filed by the Revenue stand dismissed.

Order pronounced in the open court on 20<sup>th</sup> December, 2019.

Sd/-  
**(Pawan Singh)**  
**Judicial Member**

Sd/-  
**(Shamim Yahya)**  
**Accountant Member**

Mumbai, Dated: 20<sup>th</sup> December, 2019

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -3, Nasik*
4. *The Pr.CIT - 1 Thane*
5. *The DR, "SMC" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar  
ITAT, Mumbai Benches, Mumbai*

n.p.