

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

I.T.A. No. 5295/Mum/2018 (Assessment Year 2009-10)

ITO Ward 28(1)(4) 3 rd Floor, R.No. 330 Tower No. 6, Vashi Railway Station Complex Vashi, Navi Mumbai. Pin : 400 703.	Vs.	Firoz Moinuddin Shaikh Prop. M/s. Modern Sales and Equipments & Modern Medical Stores Shop No. 1, Plot No. 211 Harban Apartment Behind Nerul Petrol Pump Nerul, Navi Mumbai-400706. PAN : ABAPS2352N
(Appellant)		(Respondent)

Assessee by	Shri Kishor Rajeshirke
Department by	Shri Akhtar H. Ansari
Date of Hearing	1.10.2019
Date of Pronouncement	4.12.2019

ORDER

This is an appeal by the revenue wherein the revenue is aggrieved that the learned CIT-A has erred in directing the Assessing Officer to restrict the addition to 15% of Rs. 2,40,524/- as against 100% addition made by the Assessing Officer vide order dated 8.6.2018 pertains to A.Y. 2009-10.

2. The assessee is an individual carrying on business that of trading in items of industrial use in the name and style of M/s. Modern Sales and Equipment and also M/s. Modern Medical Stores. The assessment was reopened upon information from sales tax department that assessee has made purchases from bogus dealers. The assessing officer in this case has made hundred percent addition on account of bogus purchase amounting to

3. Up on assessee's appeal learned CIT-A has noted that the sale has not been doubted. Accordingly placing reliance upon several case laws and up on

the facts of the case he sustained 15% disallowance out of the bogus purchases.

4. Against above order revenue is in appeal before the ITAT. We have heard both the counsel and perused the records.

5. 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 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 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.

6. In the result this appeal filed by the revenue stands dismissed.

Order has been pronounced in the Court on 4.12.2019.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 4/12/2019

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//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai