

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

I.T.A. No. 5136/Mum/2018 (Assessment Year 2009-10)

ITO-17(1)(1) Room No. 115 1 st Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Adarsh Aluminium Centre 113, Ismail Curtay Road Near Jamali Mohalla Mumbai-400 003. PAN : AAFA5326P
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Akhtar H. Ansari
Date of Hearing	19.09.2019
Date of Pronouncement	3.12.2019

ORDER

Per Shamim Yahya (AM) :-

This is an appeal by the revenue wherein the revenue is aggrieved that the learned CIT-A has sustained only 8% disallowance on account of bogus purchases vide order dated 1.6.2018 pertaining to A.Y. 2009-10

2. The assessee in this case is engaged into business of trading in aluminum utensils. 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 12.5% addition on account of bogus purchase amounting to Rs. 1,00,986/-.

3. Upon assessee's appeal learned CIT-A has noted that the sales has not been doubted. Accordingly placing reliance upon several case laws and upon the facts of the case he sustained 8% 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. 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 Eeximp 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 8% 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. In the result this appeal filed by the revenue stands dismissed.
Order has been pronounced in the Court on 3.12.2019.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 3/12/2019

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//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS