

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

I.T.A. No. 4967/Mum/2018 (Assessment Year 2009-10)

ITO-27(1)(3) Tower No. 6 4 th Floor, R.No. 409 Vashi Railway Station Vashi, Navi Mumbai.	Vs.	Shri Cheruvellil Kurian Ninan Prop. Saimex Industries Gala No. 1, Opp. Dargah Maulana Chawl, LBS Marg Ghatkopar West Mumbai-400 086. PAN : AACPN3447L
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Chaitanya Anjaria
Date of Hearing	05.09.2019
Date of Pronouncement	02.12.2019

ORDER

Per Shamim Yahya (AM) :-

This is an appeal by the revenue wherein the revenue is aggrieved that the learned CIT-A has deleted the addition of Rs. 8,41,303/- by sustaining only 12.5 % disallowance on account of bogus purchases, vide order dated 3.5.2018 pertaining to A.Y. 2009-10.

2. The assessee in this case is engaged into engineering works. 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 Rs. 10,00,425/-.

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 up on the facts of the case he sustained 12.5% disallowance out of the bogus purchases.

4. Against above order revenue is in appeal before the ITAT. We have heard learned Departmental Representative and perused the records. None appeared on behalf of the assessee despite notice. 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. The decision of N.K. Proteins Ltd. (250 Taxman 22) 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 ITA no 1004 of 20016 dt 11/2/2019.

5. In the result this appeal filed by the revenue stands dismissed.
Order has been pronounced in the Court on 02.12.2019.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 2/12/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT

*Shri Cheruvellil Kurian Ninan
Prop. Saimex Industries*

5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai