

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI PAWAN SINGH, JM

ITA No. 5628/Mum/2018
(Assessment Year: 2010-11)

ITO-27(1)(4), Tower No. 6, 4 th Floor, Room No.409, Vashi Railway Station Complex, Vashi, Navi Mumbai	Vs.	Divyesh L. Mehta Flat No. 14, 2 nd Floor, Matru Krupa CHS, 254, Hingwala Lane, Ghatkopar (E), Mumbai-400 077
PAN/GIR No. AAGPM 8738 D		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Akhtar H. Ansari
Respondent by	:	None
Date of Hearing	:	20.11.2019
Date of Pronouncement	:	07.01.2020

ORDER

Per Shamim Yahya, A. M.:

This is an appeal by the Revenue wherein the Revenue is aggrieved that the learned CIT-A has deleted the addition of Rs.28,001/- by sustaining only 12.5% disallowance on account of bogus purchases, vide order dated 12.06.2018 pertaining to Assessment Year 2010-11.

2. 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 100% additions on account of bogus purchase amounting to Rs.32,001/-.

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 12.5% disallowance out of the bogus purchases.

4. Against the above order, the Revenue is in appeal before the ITAT.

5. We have heard the ld. Departmental Representative (ld. DR for short) 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 Hon'ble 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 Hon'ble High Court has upheld hundred percent allowances 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.

6. The decision of *M/s NK Proteins Ltd. Vs. DCIT* (No. 769 of 2017 dated 16.01.2017 (SC) 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.

7. In the result, this appeal filed by the Revenue stands dismissed.

Order pronounced in the open court on 07.01.2020

Sd/-

Sd/-

(Pawan Singh)
Judicial Member

(Shamim Yahya)
Accountant Member

Mumbai; Dated : 07.01.2020
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai