

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

I.T.A. No. 4745/Mum/2018 (Assessment Year 2009-10)

M/s. Vishal Steel India Ground Floor Badrik Ashram 92, Nanubhai Desai Road Khetwadi Main Road Mumbai-400 004. PAN : AAEFV6634R (Appellant)	Vs.	ITO Ward 19(3)(5) Mumbai. (Respondent)
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Assessee by	Shri Moxit M. Sanghavi
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 assessee wherein the assessee is aggrieved that the learned CIT-A has erred in sustaining 12.5% disallowance on account of bogus purchases, vide order dated 4.5.2018 pertaining to assessment year 2009-10.

2. Brief facts of the case are that assessee in this case is engaged in the business of trading in ferrous and non-ferrous metals. The Assessment in this case was reopened upon receipt of information from the sales tax Department that assessee has made bogus purchases. The assessee submitted the purchase vouchers and the payments were made through banking channel. However the suppliers were not produced before the assessing officer. Sales in this case were not doubted. The income tax officer in this case has made 12.5% addition on account of bogus purchase resulting in disallowance of Rs. 12,94,127/-.

3. Upon assessee's appeal Id CIT(A) confirmed the same.
4. Against above order assessee is in appeal before the ITAT. We have heard both the counsel and perused the records.
5. Upon careful consideration we find that assessee has provided the documentary evidence for the purchase. Adverse inference has been drawn due to the inability of the assessee to produce the suppliers. 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 in that case all the supplies were to government agency. In the present case the facts of the 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. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, we find that it is the submission of the learned counsel of the assessee that it will be double prejudice if the gross profit already declared is not reduced from the standard 12.5% being disallowed on account of bogus purchases.
6. Upon careful consideration we find considerable cogency in the above submissions. Accordingly we direct that disallowance in this case be restricted to 12.5% of the bogus purchase as reduced by the gross profit already declared by the assessee. Learned counsel of the assessee fairly agreed to the above.

7. In the result the appeal stands partly allowed.

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS