

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

I.T.A. No. 5354/Mum/2018 (Assessment Year 2010-11)
I.T.A. No. 5355/Mum/2018 (Assessment Year 2011-12)

ITO, Ward 2(1) Room No. 25, B Wing 6 th Floor, Ashar IT Park Wagle Industrial Estate Road No. 16Z, Thane-W Pin code No. 400604.	Vs.	Shri Anant Shivram Pawar 503, Salasar Tower Near Nagar Bhawan Bhyander West Thane-401 101. PAN : AACPP2416K
(Appellant)		(Respondent)

Assessee by	Shri Ashok Sharma
Department by	Shri Akhtar H. Ansari
Date of Hearing	09.10.2019
Date of Pronouncement	06.01.2020

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the Revenue wherein the Revenue is aggrieved that the learned CIT(A) has erred in sustaining 25% disallowance on account of bogus purchases, vide common order dated 18.6.2018 pertaining to A.Y. 2010-11 & 2011-12.

2. The assessee in this case is an individual. No mention is there about the business in which assessee is engaged in the assessment order. The assessment was reopened upon receipt of information from the sales tax Department that assessee has made purchases from bogus dealers. The Assessing Officer in this case has made 100% addition on account of bogus purchase amounting to Rs. 9,38,175/- for A.Y. 2010-11 and Rs. 10,91,370/- for A.Y. 2011-12.

3. Upon assessee's appeal Id CIT(A) noted that the sales has not been doubted. Accordingly placing reliance upon several case laws and upon the facts of the case he sustained 25% disallowance out of bogus purchases.

4. Against above order Revenue is in appeals before the ITAT. We have heard both the counsel 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 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. In such a situation in our considered opinion on the facts and circumstances of the case 25% disallowance out of bogus purchase done by learned CIT(A) meets the end of justice. Accordingly, we uphold the order of learned CIT(A).

5. The decision of Hon'ble Gujarat High Court in the case of N.K. Proteins Ltd. in ITA No. 242 of 2003 dated 20.6.2016 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. in ITA no. 1004 of 2016 dated 11.2.2019.

6. In the result, these appeals filed by the Revenue are stands dismissed.
Order has been pronounced in the Court on 06.01.2020.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 06/01/2020

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//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai