

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

I.T.A. No. 5391/Mum/2018 (Assessment Year 2011-12)

M/s. Parsons Overseas 212/214, Kaliandas Udyog Bhavan, Near Century Bazar Prabhadevi Mumbai-400 025. PAN : AAGFM0518B (Appellant)	Vs.	ACIT-18(1) Mumbai. (Respondent)
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Assessee by	None
Department by	Shri Akhtar H. Ansari
Date of Hearing	09.10.2019
Date of Pronouncement	06.01.2020

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 25% disallowance on account of bogus purchases, vide order dated 12.6.2018 pertaining to assessment year 2011-12.

2. Brief facts of the case are that assessee in this case is engaged in the business of garment exporter. Information was received from the sales tax Department that assessee has made bogus purchases. The assessment was accordingly reopened.

3. The income tax officer in this case has made 100% addition on account of bogus purchase amounting to Rs. 1,29,350/-. Upon assessee's appeal Id CIT(A) sustained the same @ 25%.

4. Against above order assessee is in appeal before the ITAT. We have heard learned Departmental Representative 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. In such situation in our considered opinion on the facts and circumstances of the case 12.5% disallowance out of the bogus purchases meets the end of justice. We direct accordingly.

6. In the result, the assessee's appeal is partly allowed.

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