



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

ITA no.6595/Mum./2018  
(Assessment Year : 2009-10)

Income Tax Officer  
Ward-8(3)(1), Mumbai

..... Appellant

v/s

The Western India Genuine  
Ghee & Co. Ltd., 118, P. Hirji  
Govindji Compound, Y.J. Road  
Sewree (W), Mumbai 400 015  
PAN - AACT3195J

..... Respondent

Revenue by : Shri R. Bhoopathi  
Assessee by : Shri Mayank Chauhan

Date of Hearing - 09.12.2019

Date of Order - 04.02.2020

**ORDER**

This is an appeal by the Revenue wherein the Revenue is aggrieved that the learned CIT-A has reduced the addition of bogus purchase by sustaining only 12.5 % disallowance on account of bogus purchase, vide order dated 24<sup>th</sup> July 2018, pertaining to the assessment year 2009-10.

2. The assessee in this case is engaged in the business of manufacturing of lubricant oils, brake fluids, coolants and is the trader of greases, etc. The assessment was re-opened upon information from

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 ₹ 6.24 lakh.

3. Upon assessee's appeal, the 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 Tribunal.

5. I have heard the Counsel of both the parties and perused the records. I find that in this case the sales have not been doubted. It is settled law that when sales are not doubted, 100% disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from the decision of the Hon'ble Jurisdictional High Court in Nikunj Eximp Enterprises Pvt. Ltd. v/s ACIT, Writ Petition no.2860, order dated 18<sup>th</sup> June 2014,. In this case the Hon'ble High Court has upheld 100% allowance for the purchases said to be bogus when sales are not doubted. However, the facts of the present case indicate that the 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 my considered opinion, on the facts and circumstances of the case, 12.5% disallowance out of the bogus purchases done by the learned CIT(A) meets the end of justice. Accordingly, I uphold the order of the learned CIT(A).

6. In the result this appeal filed by the revenue stands dismissed  
Order pronounced in the open Court on 04.02.2020

**Sd/-**  
**SHAMIM YAHYA**  
**ACCOUNTANT MEMBER**

**MUMBAI, DATED: 04.02.2020**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai