



IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA no.6597/Mum./2018
(Assessment Year : 2009-10)

M/s. Agarwal Pharchem India Pvt. Ltd.
A1, Coral Park, Aarey Road
Goregaon (E), Mumbai 400 063
PAN – AADCA1865H

..... Appellant

v/s

Income Tax Officer
Range-12(1)(1), Mumbai

..... Respondent

Assessee by : None
Revenue by : Shri R. Bhoopathi

Date of Hearing – 09.12.2019

Date of Order – 03.02.2020

ORDER

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 purchase vide order dated 24th April 2015, pertaining to the assessment year 2009-10.

2. Brief facts of the case are that the assessee is engaged in the business of trading in chemicals and pharmaceutical drug items. Information was received from the Sales Tax Department that the assessee has taken accommodation entries in respect of bogus

purchase. The assessment was accordingly re-opened. The Assessing Officer in this case has made 12.5% addition on account of bogus purchase amounting to ₹ 7,54,502. Upon assessee's appeal, the learned CIT(A) confirmed the same.

3. Against the above order, the assessee is in appeal before the Tribunal. I have heard the learned Departmental Representative and perused the records. The notice sent to the assessee has returned unserved.

4. Upon careful consideration, I find that the assessee has provided the documentary evidence for the purchase. Adverse inference have been drawn due to the inability of the assessee to produce the suppliers. 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 18th 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, in that case all the supplies were to Government Agency. In the present case, the facts of the case indicate that the

assessee has made purchases 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 authorities below.

5. In the result, appeal stands dismissed.

Order pronounced in the open Court on 03.02.2020

Sd/-
SHAMIM YAHYA
ACCOUNTANT MEMBER

MUMBAI, DATED: 03.02.2020

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