



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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA no.6598/Mum./2018
(Assessment Year : 2009-10)

Asstt. Commissioner of Income Tax
Circle-19(2), Mumbai

..... Appellant

v/s

M/s. Nayon Exports
714, Parekh Market
J.S.S. Road, Opera House
Mumbai 400 004
PAN – AAAFN1173D

..... Respondent

Revenue by : Shri R. Bhoopathi
Assessee by : Shri Jitendra Singh

Date of Hearing – 09.12.2019

Date of Order – 03.02.2020

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 16th April 2015, pertaining to the assessment year 2009-10

2. The assessee in this case is engaged in manufacturing in textiles, handlooms. The assessment was re-opened upon information received from the Sales Tax Department that the assessee has made purchases

from bogus dealers. The Assessing Officer in this case has made 100% addition on account of bogus purchase amounting to ₹ 5,61,277.

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 purchase.

4. Against the above order, the Revenue is in appeal before the Tribunal.

2. I have heard the Counsel for both the parties and perused the record. 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. 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, 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). The decision of N.K. Proteins Pvt. Ltd. referred by Revenue in grounds of appeal has already been distinguished by the Hon'ble Jurisdictional High Court in the case of PCIT v/s Mohammad Haji Adam & Co., ITA no.1004 of 2016, dated 11th February 2019.

3. In the result, Revenue's 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