

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA NOS. 6818 & 6819/MUM/2018 : A.Ys : 2010-11 & 2009-10

Income Tax Officer-27(3)(2),
Mumbai (Appellant)

Vs. Shri Sameer V. Juthani
3, Satyam Industrial Estate,
Off. B.K.S.D. Marg, Govandi Station
Road, Govandi (E), Mumbai - 88.
PAN : AAAPJ8632K (Respondent)

Appellant by : Shri R. Bhoopathi

Respondent by : Shri Bhupendra Shah

Date of hearing : 12/12/2019

Date of pronouncement : 04/02/2020

ORDER

These are appeals 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 purchases, vide orders dated 05.09.2018 pertaining to assessment years 2009-10 and 2010-11.

2. The assessee in this case is engaged into assembling of engineering goods. The assessment was reopened upon information from Sales Tax Department that assessee has made purchases from bogus dealers. The Assessing Officer in this case has made 25% addition on account of bogus purchase amounting to Rs. 7,83,834/- and Rs.6,02,263/- in assessment years 2009-10 and 2010-11 respectively.

3. Upon assessee's appeal, learned CIT(A) has noted that the sales has not been doubted. Accordingly, placing reliance upon several case laws and up on

the facts of the case, he sustained 12.5% disallowance out of the bogus purchases. Against above orders, Revenue is in appeal before the ITAT.

4. I have heard both the counsel 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, hundred percent disallowance for bogus purchase cannot be done, the rationale being no sales is possible without actual purchases. This proposition is supported by Honourable Jurisdictional High Court decision in the case of *Nickunj Eximp Enterprises (P.) Ltd. vs ACIT (in Writ Petition no. 2860 of 2012, order dated 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, the facts of the present 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 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 orders of learned CIT(A).

5. In the result, both the appeals filed by the Revenue stand dismissed.

Order pronounced in the open court on 4th February, 2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai, Date : 4th February, 2020

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai