

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

I.T.A. No. 6784/Mum/2018 (Assessment Year 2010-11)
I.T.A. No. 6785/Mum/2018 (Assessment Year 2011-12)

Shri Ashwin Moolchand Madhani C/202, Vaibhav, Jamli Galli (Factory Lane), Borivali-W Mumbai-400 092 PAN : AAPPM2256H (Appellant)	Vs.	ITO-32(1)(2) C-11, Pratyakshkar Bhavan, Bandra Kurla Complex Bandra Mumbai-400 051. (Respondent)
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Assessee by	Shri Jignesh Savla
Department by	Shri P. Bhoopathi
Date of Hearing	11.12.2019
Date of Pronouncement	4.2.2020

ORDER

These are appeals by the assessee wherein the assessee is aggrieved that the learned CIT-A has erred in sustaining 12.5% disallowance on account of bogus purchases for A.Y. 2010-11 & 2011-12.

2. Brief facts of the case are that assessee is engaged in the business of building material supplier. Information was received from the sales tax Department that assessee has that in bogus purchases. The assessment was accordingly reopened. The assessing officer in this case has made 12.5% addition on account of bogus purchase amounting to Rs. 8,42,142/- for A.Y. 2010-11 and Rs. 1,44,620/- for A.Y. 2011-12. The Assessing Officer made the addition only on the basis of information from sales tax department. He did not even issue notices to the alleged bogus suppliers.

3. Upon assessee's appeals Id CIT-A confirmed the same.

4. Against above order assessee is in appeals before the ITAT. I have heard both the counsel and perused the records. Upon careful consideration I 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. 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 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 my considered opinion on the facts and circumstances of the case the 12.5% disallowance out of the bogus purchases meets the end of justice. However in this regard learned counsel of the assessee has prayed that when only the profits earned by the assessee on these bogus purchase transaction is to be taxed the gross profit already shown by the assessee and offered to tax should be reduced from the standard 12.5% being directed to be disallowed on account of bogus purchase.

5. Up on careful consideration I find considerable cogency in the submission of the learned counsel of the assessee, as otherwise it will be double jeopardy to the assessee. Accordingly I modify the order of learned CIT-A and direct that the disallowance in this case be restricted to 12.5% of the bogus purchases as reduced by the gross profit rate already declared by the assessee on these transactions. It goes without saying that if the gross profit already declared is more than 12.5% no disallowance is called for. Ld counsel of the assessee fairly accepted this proposition.

6. In the result these appeals filed by the assessee stand partly allowed.

Order has been pronounced in the Court on 4.2.2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 4/2/2020

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//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS