

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

I.T.A. No. 5967/Mum/2018 (Assessment Year 2009-10)

M/s. Gala Coatings Plot No. 9, Gala No. 1 Kamdhenu Industrial Estate, Fatherwadi Vasai Road Thane-401 208. PAN : AAAGFG6937J (Appellant)	Vs.	ITO-4(5) I.T. Asher Park Thane West Mumbai-400 604. (Respondent)
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Assessee by	Shri Bupendra Shah
Department by	Shri Akhtar H. Ansari
Date of Hearing	26.11.2019
Date of Pronouncement	3.02.2020

ORDER

Per Shamim Yahya (AM) :-

This is an appeal by the assessee wherein the assessee is aggrieved that the learned CIT-A has erred in sustaining 100% disallowance on account of bogus purchases by order dated 10.8.2018 for A.Y. 2009-10.

2. Brief facts of the case are that assessee is engaged in the metal coating business. 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 100% addition on account of bogus purchase amounting to Rs. 15,03,840/-.

3. Upon assessee's appeal Id CIT(A) confirmed the same.

4. Against above order assessee is in appeal before the ITAT. We have heard both the counsel and perused the records.

5. Upon careful consideration we 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. We 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 our 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 purchases.

6. Upon careful consideration, we find considerable cogency in the submission of the learned Counsel of the assessee as otherwise it will be double jeopardy to the assessee. Accordingly, we 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. If the profit already declared by the assessee is more than 12.5% no disallowance is required. Learned Counsel of the assessee fairly accepted this proposition.

7. In the result, this appeal by the assessee stands partly allowed.

Order has been pronounced in the Court on 3.2.2020.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 03/01/2020

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