

THE INCOME TAX APPELLATE TRIBUNAL
"H" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 5669/Mum/2018 (Assessment Year 2010-11)
I.T.A. No. 5670/Mum/2018 (Assessment Year 2011-12)

ACIT-17(1) Room No. 117 Aayakar Bhavan M.K. Road New Marine Lines Mumbai-400 020. (Appellant)	Vs.	M/s. Heeramaneck & Son Ground Floor, Ready Money Building, Battery Street Mumbai-400 005. PAN :AAFFM4776L (Respondent)
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Assessee by	None
Department by	Shri Pankaj Kumar
Date of Hearing	05.12.2019
Date of Pronouncement	06.02.2020

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the Revenue wherein the revenue is aggrieved that the learned CIT-A has deleted the addition of Rs. 6,56,573/- for A.Y. 2010-11 and Rs. 8,79,543/- for A.Y. 2011-12 by sustaining only 2.75% disallowance on account of bogus purchases, vide respective orders for A.Y. 2010-11 & 2011-12.

2. The assessee in this case is engaged into trading business. 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 12.5% addition on account of bogus purchase amounting to Rs. 841,761/- for A.Y. 2010-11 and Rs. 11,27,619/- for A.Y. 2011-12. The Assessing Officer made the disallowance by referring to information from Sales Tax Department. He did not issue any notice to the suppliers.

3. Upon assessee's appeal learned CIT-A has noted that the sales have not been doubted. He note that the assessee gross profit declared is already 9.5%.

Accordingly by placing reliance upon several case laws and up on the facts of the case he sustained 2.75% disallowance out of the bogus purchases.

4. Against above order revenue is in appeal before the ITAT. We have heard learned Departmental Representative and perused the records.

5. 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 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 situation in our considered opinion on the facts and circumstances of the case the 12.5 % disallowance out of the bogus purchase as reduced by the gross profit already declared serves the interest of justice. Since in the present case Ld CIT(A) has followed this view we do not find any infirmity in his order where he has considered the gross profit already declared and given credit for that.

6. In the result these appeal filed by the Revenue stand dismissed.

Order has been pronounced in the Court on 6.2.2020.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 06/02/2020

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//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai