

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

Before Shri Shamim Yahya, Accountant Member

ITA No.207 /Mum/2019
Assessment Year : 2009-10

ITO 28(3)(4) Mumbai	Vs.	Valson Fabricators, Plot No.85, MIDC Thane Belapur Road, TTC Industrial Area, Navi Mumbai 400 701.
(Appellant)		PAN AACFV5519P (Respondent)

CO No. 06/Mum/2020
(Arising out of ITA No.207 /Mum/2019
for Assessment Year : 2009-10)

Valson Fabricators, Navi Mumbai 400 701.	Vs.	ITO 28(3)(4) Mumbai
PAN AACFV5519P (Cross-Objector)		(Respondent)

For the Revenue : Shri Dharm Veer Singh
For the assessee : Ms. Neha Paranjpe

Date of Hearing :15.01.2020	Date of Pronouncement : 02.03.2020
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ORDER

This appeal by the Revenue and cross-objection by the assessee arise out of the order of the learned CIT-A sustaining 25% disallowance on account of bogus purchases.

2. Brief facts of the case are that assessee is engaged in the business of fabrication. Information was received from the Sales tax Department that assessee has indulged in bogus purchases. The assessment was accordingly reopened. The

Assessing Officer in this case has made 100% addition on account of bogus purchases amounting to Rs 5,06,766/-. Upon assessee's appeal learned CIT(A) restricted the addition to 25% of the entire bogus purchases. Against the said order of the CIT(A) both the revenue and the assessee is in appeal before the Tribunal.

3. I have heard both the parties and perused the records. Upon careful consideration I find that assessee has provided the documentary evidence for the purchases. 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, 100% disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported by the decision of Hon'ble Jurisdictional High Court decision in the case of Nikunj Eximp Enterprises (in Writ Petition No. 2860, order dated 18.6.2014). In this case Hon'ble High Court has upheld 100% 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 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, disallowance @12.5% of bogus purchases would be sufficient. Similar view was taken by the Tribunal in assessee's own case for A.Y. 2010-11 vide order dated 30.09.2019. The decision referred by the Revenue has already been distinguished by the Hon'ble Bombay High Court in the case of Principal Commissioner of Income

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Valson Fabricators*

Tax vs. M Haji Adam & Co (ITA No. 1004 of 2016 dated 11/2/2019). In such situation, in my considered opinion, on the facts and circumstances of the case, 12.5 % disallowance out of the bogus purchases meets the end of justice.

5. In the result, the Revenue's appeal and the assessee's cross-objections are partly allowed.

Order pronounced in the open court on this day of 2nd March, 2020.

Sd/-

**(Shamim Yahya)
ACCOUNTANT MEMBER**

Mumbai, Dated : 2nd March, 2020.
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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'SMC' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai