

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

Before Shri Shamim Yahya, Accountant Member

ITA No.220 /Mum/2019  
Assessment Year : 2011-12

Mintu Sayermal Jain, 105, Nanubhai Desai Road, Shop NO.101, Jeevan Bhavan, Near Alankar Cinema, Mumbai 400 004.  PAN ADCPJ3983C  (Appellant)	Vs.	The DCIT CC 1(2), Mumbai       (Respondent)
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Appellant By : None

Respondent By : Shri Dharm Veer Singh

Date of Hearing :15.01.2020

Date of Pronouncement : 02.03.2020

**ORDER**

This is an appeal 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, vide order dated 17.08.2018 pertaining to assessment year 2011-12.

2. Brief facts of the case are that assessee in this case is engaged in the business of trading in ferrous and non-ferrous metals. The Assessment in this case was reopened upon receipt of information from the sales tax Department that assessee has made bogus purchases. The assessee submitted the purchase vouchers and the payments were made through banking channel. However, the suppliers were not produced before the Assessing Officer. Sales in this case were not doubted. The Assessing Officer in this case has made addition of 12.5% on account of bogus purchase resulting in disallowance of Rs 6,18,389/-. Upon assessee's appeal, learned CIT A confirmed the same.

3. Against the said order of the CIT(A), assessee is in appeal before the ITAT. None appeared on behalf of the assessee despite notice. I have heard the learned DR and perused the records.

4. Upon careful consideration, I find that assessee has provided 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 the decision of Hon'ble Jurisdictional High Court in the case of Nikunj Eximp Enterprises (in Writ Petition No. 2860, order dt 18.6.2014). In this case the Hon'ble 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 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. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, I find that as held by Hon'ble High Court of Bombay in its recent judgment in the case of Principal Commissioner of Income Tax vs. M Haji Adam & Co (ITA No. 1004 of 2016 dated 11/2/2019 in paragraph 8 thereof), the addition in respect of bogus purchases is to be limited to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchases.

5. Respectfully following the aforesaid judgment of the Hon'ble High Court, I set aside the matter to the file of the assessing officer with the direction to restrict the addition as regards the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchases. Needless to add, the assessee should be granted adequate opportunity of being heard.

6. In the result assessee's appeal is partly allowed.

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

**Sd/-**  
**(Shamim Yahya)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated 2<sup>nd</sup> 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