

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

Before Shri Shamim Yahya, Accountant Member

ITA No.218 /Mum/2019
Assessment Year : 2009-10

Proto Chemicals Industries, 403, V Star Plaza, Chandavarkar Lane, Borivali (West) Mumbai 400 092. PAN AAJFP3713C (Appellant)	Vs.	ITO 32(2)(5) Mumbai. (Respondent)
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Appellant By : Shri Mahesh Saboo
Respondent By : Shri Dharm Veer Singh

Date of Hearing :15.01.2020	Date of Pronouncement : 02.03.2020
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ORDER

This is an appeal by the assessee, wherein the assessee is aggrieved by the order of the learned CIT(A)-44, Mumbai, in sustaining 12.5% disallowance on account of bogus purchases.

2. Brief facts of the case are that assessee is engaged in the business of manufacturing of chemicals. Information was received from the Sales tax Department that assessee has claimed bogus purchases. The assessment was accordingly reopened. The Assessing Officer in this case has made 15% addition on account of bogus purchase amounting to Rs 74,982/- On appeal, the learned CIT(A) restricted the addition to 12.5%. Aggrieved, the assessee is in appeal before the ITAT.

3. 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 decision of Hon'ble Jurisdictional High Court in the case of Nikunj Eximp Enterprises (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 of 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 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 transactions is to be taxed, the gross profit already shown by the assessee of around 7% and offered to tax should be reduced from the standard 12.5% being directed to be disallowed on account of bogus purchase. In such a situation, he further pleaded that the ITAT should restrict the disallowance to 5%.

4. Upon 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, the order of learned CIT-A is set aside and the Assessing Officer is directed to restrict the disallowance to 5% of the bogus purchases. Learned counsel for the assessee fairly accepted this proposition.

5. In the result this appeal filed by the assessee stands 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