

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

I.T.A. No. 6271/Mum/2017 (Assessment Year 2009-10)

Shri Tejas Harakchand Shah 23, parsurampuriya Enclaves Haji Bapu Road, Malad East Mumbai-400 097. PAN : AACPS7350K (Appellant)	Vs.	ITO-30(3)(4) C-10/709, Pratyakshakar Bhavan, BKC Bandar East Mumbai-400 051. (Respondent)
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Assessee by	Shri Khushal Shah
Department by	Shri Akhtar Ali Ansari
Date of Hearing	09.01.2019
Date of Pronouncement	02.03.2020

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 10% disallowance on account of bogus purchases, vide order dated 5.6.2017 pertaining to assessment year 2009-10.

2. At the outset it is noted that there is a delay of 40 days in filing the appeal. The reasonable cause for the delay has been attributed to the delay in tax consultant's office. Upon careful consideration and hearing the parties, we condone the delay.

3. Brief facts of the case are that assessee in this case is engaged in the business of dealing in ferrous and non-ferrous metal. 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 income tax officer in this case has made 10% addition on account of bogus purchase resulting in disallowance of Rs. 13,67,302/- .

4. Upon assessee's appeal learned CIT(A) confirmed the same.

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

6. 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. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, we find that as held by honourable High Court of Bombay in its recent judgement in the case of principle Commissioner of income tax versus M Haji Adam & Co (ITA number 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.

7. We respectfully following the aforesaid judgement of the honourable High Court 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. Learned counsel of the assessee fairly agreed to the above.

8. In the result, assessee's appeal is partly allowed.

Order has been pronounced in the Court on 2.3.2020.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 02/03/2020

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