

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI**

BEFORE SHRI SHAMIM YAHYA, AM

आयकर अपील सं/ I.T.A. No.7100 & 7101/Mum/2018
(निर्धारण वर्ष / Assessment Year:2009-10 & 2010-11)

ITO 26(1)(1) Bldg. No.C-11, Room No.703, 7 th Floor, Pratykshakar Bhavan, BKC, Bandra (E), Mumbai- 400051.	बनाम/ Vs.	Altaf Nisar Ahemead Khan Flat No.306, Dwarka Shopping Centrechs Ltd. Sonapur Lane, LBS Marg, Kurla (W), Mumbai-400072
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AJGPK2419L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Chaitanya Anjaria	
Assessee by:	None	

सुनवाई की तारीख / Date of Hearing: 18/02/2020
घोषणा की तारीख /Date of Pronouncement: 20/04/2020

आदेश / O R D E R

PER SHAMIM YAHYA, AM:

These are appeals by the revenue wherein the revenue is aggrieved that the Ld. CIT(A) has deleted part of the addition of bogus purchase by sustaining 9% only disallowance on account of bogus purchase pertaining to A.Ys.2009-10 & 2010-11.

2. The assessee in this case is engaged into Scrap Business.
3. The assessment was reopened upon information from sales tax department that assessee has made purchases from bogus dealers.



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4. The AO in this case has made 12.5% addition on account of bogus purchase amounting to Rs.3,44,276/- for the A.Y.2009-10 of Rs.9,47,584/- for the A.Y.2010-11.

5. Up on assessee's appeal Ld. CIT(A) has noted that the sales has not been doubted. Accordingly placing reliance upon several case laws and up on the facts of the case he sustained 9% disallowance out of the bogus purchases by giving credit to the assessee for profit already declared.

6. Against above order revenue is in appeal before the ITAT. I have heard Ld. DR and perused the records.

7. 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 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 my considered opinion on the facts and circumstances



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of the case the 9% disallowance out of the bogus purchases meets the end of justice. Accordingly, I uphold the order of Ld. CIT(A).

8. The decision of N.K. Proteins referred by revenue in grounds of appeal has already been distinguished by Hon'ble Bombay High Court in the case of M. Haji Adam & Co. ITA. No.1004 of 2016 dated 11.02.2019.

In the result, this appeal filed by the revenue stand dismissed.

Order pronounced in the open court on 20/04/2020

Sd/-
(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 20/04/2020

Vijay Pal Singh/Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai