

THE INCOME TAX APPELLATE TRIBUNAL
“C” Bench, Mumbai
Before Shri A.D. Jain (VP) & Shri Shamim Yahya (AM)

I.T.A. No. 3552/Mum/2019 (Assessment Year 2009-10)

Shri Pravin C. Bokadia Shop No. 77, Ground Flr. Dr.M.G. Mahimtura Marg 3 rd Kumbharwada Lane Mumbai-400 004. PAN :AAQPB4778E (Appellant)	Vs.	ITO-Circle 19(2)(5) Room No. 210 Matru Mandir Tardeo, Grant Road Mumbai-400 007. (Respondent)
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Assessee by	Shri Vimal Punmiya
Department by	Shri V. Vinod Kumar
Date of Hearing	12.03.2020
Date of Pronouncement	17.07.2020

ORDER

Per Shamim Yahya (AM) :-

This is an appeal by the assessee wherein the assessee is aggrieved by the addition of account of bogus purchase. The assessee further agitates that the learned CIT-A has erred in enhancing the disallowance on account of bogus purchases to 100% as against 12.5% disallowance done by the assessing officer pertaining to assessment year 2009-10 vide order dated 30.4.2019.

2. Brief facts of the case are that assessee in this case is engaged in the business of trading in steel. 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 made the disallowance at the rate of 12.5% of the bogus purchases. The assessing officer did not make any enquiry of his own with the

alleged bogus suppliers. However the assessing officer noted that assessee has provided Stock statement and the entries are there for the said purchases.

3. Upon assessee's appeal learned CIT(appeals) enhanced the addition to 100%. For this proposition she referred to the decision of Hon'ble jurisdictional High Court in the case of Shoreline Hotel Pvt. Ltd. (98 taxmann.com 234). Though she also noted that the said decision was rendered in the context of an order under section 263 of the income tax act. The learned CIT(appeals) further observed that the disallowance of purchase is based purely on satisfaction of the conditions of section 37. She further observed that during the course of appellate proceedings the assessee was asked to furnish stock register and item to item tally of purchases and sales. She noted that assessee submitted that no stock register was maintained and that purchase to sale cannot be tallied item wise

4. Against the above order assessee is in appeal before the ITAT. We have heard both the counsel and perused the records. The learned counsel of the assessee prayed that the decision of honourable jurisdictional High Court in the case of M.Haji Adam & Co. (ITA no 1004 of 20016 dt. 11/2/2019) should be followed. Hence, he requested that the matter should be remitted to the file of assessing officer.

5. Per contra learned departmental representative relied upon the orders of the learned CIT appeals. He sought to distinguish the decision of honourable jurisdictional High Court in the case of M.Haji Adam & Co. (supra) from the facts of the present case.

6. Upon careful consideration we find that addition in this case has been solely made by the assessing officer on the reasoning that upon enquiry by the sales tax Department it has been found that assessee is beneficiary of bogus purchases from the parties mentioned. Assessing officer has not issued any notice to these parties. He has noted that assessee has furnished the Ledger

accounts and the purchase invoices. He has also noted that assessee has furnished stock statement wherein the purchases as duly entered. The assessing officer has not doubted the sales. In these circumstances the assessing officer concluded that assessee has made the purchases through grey market and hence following the honourable Gujarat High Court decision CIT Vs. Simit P. Sheth 356 ITR 451 (Guj.) He made a disallowance of 12.5%.

7. Upon assessee's appeal learned CIT(appeals) has enhanced the addition to hundred percent. In doing so she has referred to the honourable jurisdictional High Court decision in the case of Shoreline Hotels Pvt. Ltd.(supra). It is settled law that case law cannot be considered in isolation of the context thereof. This is duly the ratio arising out of the decision of honourable Supreme Court in the case of Sun Engineering Works Pvt. Ltd. (198 ITR 2970. In the decision of Shorteline Hotels Pvt. Ltd. (supra) considered by the Hon'ble Bombay High Court was in context of the order passed by learned CIT(A) under section 263 of the income tax act, wherein the ITAT had upheld the order of the learned CIT, invoking his jurisdiction u/s. 263. The issue was expenditure incurred in the maintenance by a hotel. In contrast the present case is a case where the assessee is a dealer in steel and disallowance has been done by the Assessing Officer on a finding that the assessee has made purchases through grey market.

8. In our considered opinion by no stretch of imagination it can be said that there is any similarity in the facts upon which the honourable jurisdictional High Court has rendered the above said decision and the facts of the present case.

9. Furthermore Id CIT has observed that assessee was asked to furnish stock register and item to item tally of purchase and sales. She further noted that assessee submitted that no stock register was maintained the purchases to sales cannot be tallied item-wise. We find that this observation of the learned CIT is in direct contrast with the finding of the assessing officer.

Assessing officer has found that assessee has duly maintained the stock statement the purchases are duly mentioned therein. Be as it may when learned CIT is giving a finding that assessee has not been able to tally the sales to the purchases and as per the learned CIT the purchases are hundred percent bogus, then the natural corollary was that learned CIT should have rejected the sales as well. Since learned CIT has not done so the observations of the learned CIT do not support the case for 100% disallowance. Moreover, neither the Assessing Officer nor the learned CIT(A) has rejected the books of account. It is settled law from honourable Bombay High Court in the case of Nikunj eximp enterprises (in writ petition no 2860, order dt 18.6.2014) that when sales are not doubted, disallowance for bogus purchases is not sustainable. Though the above decision in context of an assessee executing works for government department.

10. In the present case we find that the ratio of the decision of honourable Jurisdictional High Court in the case of M.Haji Adam & Co. (supra) is duly applicable. In the said case honourable jurisdictional High Court had expounded that in case of trading concerns the addition on account of bogus purchases should be limited to the difference between the gross profit that is shown by the assessee on normal purchase as against the gross profit shown on bogus purchases.

11. Accordingly, we remit the issue to the file of the Assessing Officer to make the disallowance in accordance with the ratio of the decision of Hon'ble Bombay High Court in the case of M.Haji Adam & Co. (supra).

12. In the result, appeal by the assessee is partly allowed.

Order has been pronounced under rule 34(4) of ITAT on 17.07.2020.

Sd/-

(A.D. JAIN)
VICE PRESIDENT

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 17/07/2020

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//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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