

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

I.T.A. No. 7041/Mum/2018 (Assessment Year 2011-12)

ITO-26(2)(3) Room No. 711, C-11 7 th Floor, Pratyakshakar Bhava, BKC Bandra East Mumbai-400 051. (Appellant)	Vs.	Modern Stone Company Shop No. A/4/5, Sakinaka Industrial Market Sakinaka, Mumbai-400 072. PAN : AAKFM4965C (Respondent)
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Assessee by	Shri Fenil Bhatt
Department by	Shri Chaitanya Anjaria
Date of Hearing	17.2.2020
Date of Pronouncement	20.4.2020

ORDER

This is an appeal by the revenue wherein the revenue is aggrieved that the learned CIT-A has deleted part of the addition for bogus purchase by sustaining only 12.5% disallowance on account of bogus purchases, vide order dated 29.6.2018 pertaining to A.Y. 2011-12.

2. The assessee in this case is engaged into the business of building material and sanitary ware. The assessment was reopened upon information from sales tax department that assessee has made purchases from bogus dealers. The assessing officer in this case has made 100% addition on account of bogus purchase amounting to Rs. 2,08,919/-.

3. Upon assessee's appeal learned CIT-A has noted that the sales have not been doubted. Accordingly placing reliance upon several case laws and up on the facts of the case he sustained 12.5% disallowance out of the bogus purchases.

4. Against above order revenue is in appeal before the ITAT. I have heard both the counsel and perused the records. 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 Hon 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 such situation in my considered opinion on the facts and circumstances of the case the 12.5% disallowance out of the bogus purchases done by the learned CIT-A meets the end of justice. Accordingly I uphold the order of learned CIT-A.

5. The decision of N. K. Proteins Ltd. (250 ITR 22) 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 20016 dt. 11/2/2019).

6. In the result this appeal filed by the revenue stands dismissed.
Order has been pronounced in the Court on 20.4.2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 20/4/2020

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