

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"H" Bench, Mumbai**

**Before Shri Shamim Yahya, Accountant Member  
and Shri Amarjit Singh, Judicial Member**

**ITA No. 2902/Mum/2019**  
(Assessment Year: 2009-10)

ACIT, Circle-6(3)(2)  
Room No. 576, 5th Floor  
Aayakar Bhavan, M.K. Road  
Mumbai 400020

M/s. Kargwal Construction P. Ltd.  
B 102, Runwa Omkar Esquar  
Esauare, Off. Easter Express  
High Way, Sion (East)  
Mumbai 400022

PAN – AADCK1418N

**Appellant**

**Respondent**

Appellant by: Shri R. Bhoopathi  
Respondent by: Ms. Mitali Gopani

Date of Hearing: 01.09.2020  
Date of Pronouncement: 01.09.2020

**ORDER**

**Per Shamim Yahya, AM**

This is an appeal by the Revenue wherein the Revenue is aggrieved that the learned CIT(A) has reduced the addition of ₹21,41,657/- being 100% made by the AO by sustaining only 12.5% disallowance on account of bogus purchases, vide order dated 07.01.2019 pertaining to A.Y. 2009-10.

2. The assessee in this case is engaged in the business of job work and civil contractor. 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 hundred percent addition on account of bogus purchase amounting to ₹21,41,657/-. Except for reproducing assessee's reply in the assessment order the AO did not do anything. He simply wrote that the assessee's replies are not acceptable.

3. Up on assessee's appeal learned CIT(A) has noted that the sales has not been doubted. He also noted that the assessee has furnished all the important documents in support of purchase. 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. Against above order Revenue is in appeal before the ITAT.

4. We have heard both the counsels and perused the records. 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 dated 18.06.2014). 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 such situation in our considered opinion on the facts and circumstances of the case 12.5% disallowance out of the bogus purchases done by the learned CIT(A) meets the end of justice. Accordingly we uphold the order of learned CIT(A).

5. The decision of the Hon'ble Supreme Court in the case N.K. Proteins Ltd. dated 16.01.2017 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. in ITA No. 1004 of 20016 dated 11.02.2019.

6. In the result, this appeal filed by the revenue stands dismissed.

Order pronounced in the open court on 1<sup>st</sup> September, 2020.

Sd/-  
**(Amarjit Singh)**  
**Judicial Member**

Sd/-  
**(Shamim Yahya)**  
**Accountant Member**

Mumbai, Dated: 1<sup>st</sup> September, 2020

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -12, Mumbai*
4. *The Pr.CIT - 6, Mumbai*
5. *The DR, "H" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar  
ITAT, Mumbai Benches, Mumbai*

n.p.