

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

I.T.A. No. 3197/Mum/2019 (Assessment Year 2011-12)

ITO-30(3)(3) Room No. 535 5 th Floor Kautilya Bhavan Bandra East Mumbai-400 051.	Vs.	Shri Sailendra C. Singh, HUF C/o. M/s. Bharat K. Patel & Co. 402, Rishikesh Apartments Opp. NL High School S.V. Road, Malad West Mumbai-400 064. PAN : AAEHS5200C
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Akhtar H. Ansari
Date of Hearing	16.09.2020
Date of Pronouncement	16.09.2020

ORDER

This is an appeal by the revenue wherein the revenue is aggrieved that the learned CIT-A has reduced the addition for bogus purchase of Rs. 1,71,828/- done @ 100% by Assessing Officer by sustaining only 12.5% vide order dated 12.3.2019 pertaining to A.Y. 2011-12.

2. The assessee in this case is engaged into job work and electroplating. The assessment was reopened upon information from sales tax department that assessee has made purchases from bogus dealers. The AO made 100% addition of the bogus purchase.

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 Learned Departmental Representative and perused the record. 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 expenses of exchequer. In such situation in our 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) relied by the revenue was a dismissal of SLP by the Hon'ble supreme court and has already been explained and distinguished by Hon'ble Bombay high court in the case of M. Hazi Adam & Co. (ITA no. 1004 of 2006 dated 11.2.2019).

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

7. Before parting I may add that if the assessee has filed a cross appeal or cross objection and the same has remained unheard, either party may apply for recall of this order so that the appeals can be heard together.

Order pronounced on 16.9.2020 in the course of virtual hearing.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 16/09/2020

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