

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI

Before Shri Shamim Yahya, Accountant Member

ITA Nos.1636, 1637 & 1638/MUM/2019
Assessment Years : 2009-10, 2010-11 & 2011-12

M/s Vajra Tools, Gupte House, 1 st Floor, Plot No.376, 6 th Road, Chembur, Mumbai 400 071. PAN AAAFV2350E (Appellant)	Vs.	ITO 27(3)(5) Mumbai (Respondent)
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Appellant By : None
Respondent By : Shri Pramod Nikalje

Date of Hearing : 21.09.2020	Date of Pronouncement : 22.09.2020
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ORDER

These are appeals by the assessee wherein the assessee is aggrieved that the learned CIT(A) has erred in sustaining 100% disallowance on account of bogus purchases, vide orders for concerned assessment years as under:

Assessment Year	Disallowance on account of alleged bogus purchase (Rs.)
2009-10	8,83,246
2010-11	1,51,268
2011-12	3,55,738

2. Brief facts of the case are that assessee in this case is engaged in the business of manufacture of Industrial Diamond Drill Bits. 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, no adverse inference on any other aspect of assessee's working was recorded. The Assessing Officer in this case has made 100% addition on account of bogus purchase . Upon assessee's appeal learned CIT A confirmed the same.

3. Against above order of the CIT(A), assessee is in appeal before the ITAT.

4. I have heard the learned DR and perused the records. Upon careful consideration I find that assessee has provided the documentary evidence for the purchase. Adverse inferences have been drawn due to the inability of the assessee to produce the suppliers. I find that in this case the sales have not been doubted. It is settled law that when sales are not doubted, 100% disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from Hon'ble 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'ble High Court has upheld 100% allowance for the purchases said to be bogus when sales are not doubted. However, in that case all the supplies were to government agency.

5. In the present case, facts of the 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. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, I find, as held by Hon'ble High Court of Bombay in its recent judgment in the case of PCIT vs. M Haji Adam &Co (ITA No. 100 of 2016 dated 11/2/2019 in paragraph 8 there off) ,the addition in respect of bogus purchases is to be limited to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchases. Accordingly, I direct the Assessing Officer to follow the aforesaid Hon'ble Jurisdictional High Court decision and restrict the disallowance to the difference

between the gross profit on normal purchases and the gross profit of the bogus purchases. I direct accordingly.

6. In the result the appeals are partly allowed.

Order pronounced under Rule 34(4) of the ITAT Rules on 22/09/2020.

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

Mumbai, Dated : 22nd September, 2020.
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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A),
4. The CIT
5. The DR, 'SMC' Bench

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai