

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA No. 3422/Mum/2019
Assessment Year: 2010-11.

The Income-tax Officer,
20(3)(4), Mumbai.

Vs. M/s. Sumangal Artech
172, MMGS Building
MMGS Marg,
Mumbai-400 014.

Appellant.

Respondent.

PAN AAAFS3316B.

Revenue by : Shri Pramod Nikalje
Assessee by : None

Date of Hearing : 22-09-2020
Date of pronouncement : 22-09-2020

ORDER

PER SHAMIM YAHYA, A.M.

This is an appeal by the revenue wherein the revenue is aggrieved that the Ld. CIT-A has reduced the addition for bogus purchase of Rs 2,11,406/- done @ 100% by AO by sustaining only 12.5% at Rs. 26,426/- by order dated 06.03.2019 pertaining to A.Y 2010-11.

2. The assessee in this case is engaged into business of printing along with related labour work.

3. 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.

4. Up on assessee's appeal Ld. CIT-A has noted that the sales or other workings have been doubted. Accordingly placing reliance upon several case laws and upon the facts of the case he sustained 12.5 % disallowance out of the bogus purchases.

5. Against above order revenue is in appeal before the ITAT. I have heard Ld. DR and perused the record.

6. I find that in this case the sales or other aspect of workings 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 dated 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 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 Ld. CIT-A meets the end of justice. Accordingly I uphold the order of Ld. CIT-A.

7. The decision of NK proteins relied by the AO 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/s Mohommad Haji Adam & Co. order dated 11.02.2019.

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

9. 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 under rule 34(4) of ITAT Rules on this 22/09/2020

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER.

Mumbai; Dated 22/09/ 2020

N.V Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai