

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM

ITA No. 2169/Mum/2019
(Assessment Year:2011-12)

ITO-18(3)(5) Room No. 605, 6 th Floor, Earnest House, Nariman Point, Mumbai-400 021	Vs.	Shri Vipulkumar Ratanlal Bafna 52-A, Shop No. 10, Mulji Thakersi Building, Islampura Street, Near Alankar Cinema, Mumbai-400 004
PAN/GIR No. AIHPB 5085 D		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Somnath Wajale
Respondent by	:	None
Date of Hearing	:	08.10.2020
Date of Pronouncement	:	08.10.2020

ORDER

Per Shamim Yahya, A. M.:

This is an appeal by the Revenue wherein the Revenue is aggrieved that the learned Commissioner of Income Tax (Appeal)-51, Mumbai ('CIT(A)' for short) dated 28.01.2019 has reduced the addition for bogus purchase of Rs.20,75,174/- done @ 12.5% by the Assessing Officer (A.O. for short) by sustaining only 6%.

2. The assessee in this case is engaged into the business of trading in ferrous and non-ferrous metals under the name of M/s. Inox Steel (India) as proprietor. The assessment was reopened upon information from the Sales Tax Department that the assessee has made purchases from bogus dealers. The A.O. made 12.5% addition of the bogus purchase of Rs.1,66,01,395/-.

3. Upon the assessee's appeal, the ld. CIT(A) has noted that the sales has not been doubted. Accordingly, placing reliance upon ITAT order in assessee's own case for A.Ys.2009-10 and 2010-11, he sustained 6% disallowance out of the bogus purchases.

4. Against above order, the Revenue is in appeal before the ITAT.

5. None appeared for and on behalf of the assessee despite notice sent. Hence, I proceed to adjudicate the issue by hearing the ld. Departmental Representative and perusing 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 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 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 6% disallowance out of the bogus purchases done by the learned CIT-A following the ITAT order for earlier years in assessee's own case is not be interfered with. Accordingly, I uphold the order of ld. CIT(A).

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 under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board on 08.10.2020.

Sd/-
(Shamim Yahya)
Accountant Member

Mumbai; Dated : 08.10.2020

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai