

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

I.T.A. No. 2147/Mum/2019 (Assessment Year 2009-10)

ITO-28(1)(3) Room No. 327, 3 rd Floor Tower No. 6, Vashi Railway Station Complex, Vashi Navi Mumbai-400703. (Appellant)	Vs.	M/s. Computer World RH-01, G-55, Sector-07 Vashi, Navi Mumbai Pincode-400 703. PAN : AAFFC6439G (Respondent)
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C.O. No. 46/Mum/2020 (Assessment Year 2009-10)

M/s. Computer World RH-01, G-55, Sector-07 Vashi, Navi Mumbai Pincode-400 703. PAN : AAFFC6439G (Appellant)	Vs.	ITO-28(1)(3) Room No. 327, 3 rd Floor Tower No. 6, Vashi Railway Station Complex, Vashi Navi Mumbai-400703. (Respondent)
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Assessee by	Shri Kalpesh Turalkar
Department by	Shri Somnath Wajale
Date of Hearing	08.10.2020
Date of Pronouncement	08.10.2020

ORDER

This is an appeal by the Revenue and cross objection by the assessee, wherein they are aggrieved that the learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] has erred in sustaining 12.5% disallowance on account of bogus purchases, vide order dated 25.1.2019 pertaining to assessment year 2009-10.

2. Brief facts of the case are that assessee in this case is engaged in the business of trading in computer parts and peripherals. 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. The income tax officer in this case has made 100% addition on account of bogus purchase resulting in disallowance of Rs. 18,92,775/-.

3. Upon assessee's appeal learned CIT(A) reduced the same to 12.5%.

4. Against above order Revenue is in appeal before the ITAT and assessee has filed cross objection. I have heard both the counsel and perused the records.

5. 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, 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 in that case all the supplies were to government agency. In the present case the 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 that it is the submission of the learned counsel of the assessee that it will be doubled prejudice if the gross profit already declared is not reduced from the standard 12.5% being disallowed on account of bogus purchases.

6. Upon careful consideration I find considerable cogency in the above submissions. Accordingly I direct that disallowance in this case be restricted to 12.5% of the bogus purchase as reduced by the gross profit already declared by the assessee. Learned counsel of the assessee fairly agreed to the above

7. In the result, Revenue's appeal stands dismissed and assessee's cross objection is partly allowed.

Order pronounced under Rule 34(4) of the ITAT Rules on 08.10.2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 08/10/2020

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//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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