

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

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM

ITA No.3601/Mum/2019
(Assessment Year: 2010-11)

Income Tax Officer – 33(1)(4) Mumbai	Vs.	Dinesh Gupta Room No. 94B, 9 th Floor, Kautilya Bhavan, G-Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051
PAN/GIR No. AEGPG 6882 C		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Hitesh Purohit
Respondent by	:	Shri Jeetendra Kumar
Date of Hearing	:	20.10.2020
Date of Pronouncement	:	22.10.2020

ORDER

Per Shamim Yahya, A. M.:

This is an appeal by the assessee wherein the Revenue is aggrieved that the learned Commissioner of Income Tax (Appeals)-45, Mumbai (‘Id.CIT(A) for short) dated 27.02.2019 has reduced the addition for bogus purchase of Rs.5,82,838/- done by the Assessing Officer @ 100% by sustaining only 12.5%.

2. The assessee in this case is engaged into the business of wires and other electric fittings. The assessment was reopened upon information from sales tax department that the assessee has made Rs.5,82,838/- purchases from bogus dealers. The A.O. made 100% addition of the bogus purchase.

3. Upon the assessee’s appeal, the Id. CIT(A) has noted that the sales has not been doubted. Accordingly, placing reliance upon the several case laws and upon the facts of the case, he sustained 100% disallowance out of the bogus purchases.

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

5. We have heard both the counsel and perused the records. We 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 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, we uphold the order of learned CIT-A.

6. In the result, this appeal filed by the Revenue stands dismissed

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board on 22.10.2020.

Sd/ -

Sd/-

(Ram Lal Negi)
Judicial Member

(Shamim Yahya)
Accountant Member

Mumbai; Dated : 22.10.2020

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