

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

I.T.A. No. 3633/Mum/2019 (Assessment Year 2010-11)

ITO-27(1)(4) Room No. 409 4 th Floor, Tower No. 6 Vashi Railway Station Complex, Vashi Navi Mumbai-400 703. (Appellant)	Vs.	Shri Indrjeet Singh Bhabra Borla CHS, Opp. Basant Cinema, Flat No. 5/9 Chembur, Mumbai-400074. PAN : AAIPB7410R (Respondent)
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Assessee by	Shri Jeetendra Kumar
Department by	Shri Mehul Shah
Date of Hearing	20.10.2020
Date of Pronouncement	21.10.2020

ORDER

Per Shamim Yahya (AM) :-

This is an appeal by the revenue wherein the revenue is aggrieved that the Learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] has erred in deleting the addition of Rs. 1,56,000/- done @ 100% by the Assessing Officer.

2. The assessee in this case is engaged into the business of engineering and fabrication work. The assessment was reopened upon information from sales tax department that assessee has made purchases of Rs.1,56,000/- from bogus dealers. The Assessing Officer made 100% addition of the bogus purchases.

3. Upon assessee's appeal learned CIT-A has noted that the said purchases has been offered as income u/s. 41(1) in A.Y. 2015-16. Hence he deleted this disallowance by holding as under :-

"The Grounds No. 1 & 2 of the appeal are against the addition of Rs. 1,56,000/- as non-genuine purchases. During the appellate proceedings it was stated that the purchase of Rs. 1,56,000/- from M/s Montex Industries was of inferior quality, therefore appellant refused to make payment. The goods were not replaced. Therefore, in A.Y 2015-16 appellant has written

back this amount in his books of accounts and paid tax. Copy of P & L Account and supporting documents were filed. It was argued that appellant has already paid tax on the alleged purchase and no further addition can be made on this purchase again. In view of these facts of the case I am in agreement with the submission of the appellant accordingly the addition of entire bogus purchase of Rs. 1,56,0007- is deleted. These grounds of appeal are 'Allowed.'"

4. Against above order revenue is in appeal before the ITAT. 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 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. Moreover, we note the assessee plea that since the impugned purchases were of inferior quality assessee made efforts to refund the same. Being unsuccessful he offered the same as income in A.Y. 2015-16. Learned CIT(A) has given a factual finding in this regard. Thus no prejudice is caused to the revenue as impugned sum has already been shown as income subsequently. Hence, we do not find any infirmity in the order of learned CIT(A). Hence, we uphold the same.

5. The decision of N.K. Proteins Ltd. (250 ITR 22) relied by the revenue 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. Hazi Adam & Co. (ITA No. 1004 of 2006 dated 11.2.2019).

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

Order pronounced under Rule 34(4) of the ITAT Rules on 21.10.2020.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 21/10/2020

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//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai