

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

I.T.A. No. 3500/Mum/2019 (Assessment Year 2010-11)

ITO 33(1) Room No. 945 9 th Floor, Kautilya Bhavan, C-41 to C-43 G-Block, BKC, Bandra East, Mumbai-400 051.	Vs.	Asma Niyaz Manihar A/41, Dremland CHS Ltd., Opp. Government Industrial Estate Charkop, Kandivali(W) Mumbai-400 067. PAN : AJCPM4256D
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Jitendra Kumar
Date of Hearing	19.10.2020
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 reduced the addition for bogus purchase done @ 25% by AO by sustaining only 12.5% thereof vide order dated 11.2.2019 pertaining to A.Y. 2010-11.

2. The assessee in this case is engaged into steel trading. The assessment was reopened upon information from sales tax department that assessee has made purchases Rs. 96,34,149 from bogus dealers, the AO made 25% addition of the bogus purchase after reducing 3.18% gross profit declared by the assessee resulting in disallowance of Rs. 21,02,171/-.

3. Upon assessee's appeal learned CIT-A has noted that the sale has not 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, as reduced by gross profit already declared by the assessee of 3.18%. Thus learned CIT(A) sustained the disallowance of Rs. 8,98,152/-.

4. Against above order revenue is in appeal before the ITAT. We have heard learned Departmental Representative and perused the record. At the outset we note that in the grounds of appeal by the Revenue, it has not submitted that the Assessing Officer as well as learned CIT(A) have also granted reduction of gross profit already declared by assessee. To this extent this ground by the revenue itself is misplaced. Be as it may, we find 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 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 as reduced by gross profit already declared by the learned CIT-A meets the end of justice. Accordingly we uphold the order of learned CIT-A.

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

6. Before parting we 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 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//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai