

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

I.T.A. No. 1478/Mum/2019 (Assessment Year 2009-10)
I.T.A. No. 1479/Mum/2019 (Assessment Year 2010-11)

Primex Metal 100/102, Narayan Building, 4 th Floor Office No. 26 Ardeshir Dady Street Mumbai-400 004. PAN : AACFP3058P (Appellant)	Vs.	ITO-19(2)(5) Matru Mandir 2 nd Floor Tardeo Mumbai-400 007. (Respondent)
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Assessee by	None
Department by	Shri Kailash Gaikwad
Date of Hearing	14.10.2020
Date of Pronouncement	19.10.2020

ORDER

These are appeals by the assessee wherein the assessee is aggrieved that the Learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] has erred in sustaining the addition for bogus purchase of Rs. 4,16,009/- for A.Y. 2010-11 and Rs. 11,08,288/- for A.Y. 2009-10 done by Assessing Officer @ 12.5%.

2. The assessee in this case is engaged into the business of trading in ferrous and non-ferrous metals. The assessment was reopened upon information from sales tax department that assessee has made purchases from bogus dealers, the Assessing Officer made 12.5% addition of the bogus purchase. Though the Assessing Officer observed that assessee has not shown corresponding sales out of bogus purchases, he chose to disallow only 12.5%. The Assessing Officer did not make any independent inquiry of his own. He did not issue notices to alleged bogus suppliers.

3. Upon assessee's appeal learned CIT-A confirmed the addition.
4. Against above order revenue is in appeal before the ITAT. I have heard learned Departmental Representative and perused the record. I find that the addition has been done solely on the basis of sales tax information. No independent inquiry has been done by the Assessing Officer. 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 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.
5. I note that it has been submission of the assessee before the authorities below that assessee has already shown sufficient gross profit. In my considered opinion it will be double prejudice to the assessee if the gross profit already declared and offered to tax is not reduced from the 12.5% disallowance done by the authorities below. Hence, I direct that the disallowance should be restricted to 12.5% the gross profit already shown in this regard.
6. In the result, these appeals are partly allowed.
Order pronounced under Rule 34(4) of the ITAT Rules on 19.10.2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 19/10/2020

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