

**आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में**

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI**

श्री शमीम याहया, लेखा सदस्य के समक्ष

BEFORE SRI SHAMIM YAHYA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 2996/Mum/2019

(निर्धारण वर्ष / Assessment Years 2009-10)

The Asst. Commissioner of Income-tax, Ward 28(1) Room No.306, 3 <sup>rd</sup> Floor, 6 <sup>th</sup> Tower, Vashi Railway Station Complex, Vashi, Navi Mumbai-400 703	बनाम/ Vs.	Mr. Jaisingh Patel [Prop. Separation Engineers (India)] C6/6, 2:1, Sector-03, CBD belapur, Navi Mumbai-400604
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AASPP4871E		

अपीलार्थी की ओर से/ Appellant by	:	Shri Smita Verma, DR
प्रत्यर्थी की ओर से/ Respondent by	:	None

सुनवाई की तारीख / Date of hearing:	09.11.2020
घोषणा की तारीख / Date of pronouncement:	12.11.2020

**आदेश / ORDER**

This is an appeal by the Revenue wherein the Revenue is aggrieved that the learned Commissioner of Income Tax [Appeals (in short 'the CIT(A)'] has reduced the addition for bogus purchases of



₹4,36,010/- done on peak credit basis by Assessing Officer by sustaining only 12.5%.

The assessee in this case is engaged into business of manufacturing of screening machine. The assessment was reopened upon information from Sale Tax Department that assessee has made 21,24,977/- purchases from bogus dealers. The Assessing Officer made addition of the bogus purchases amounting to ₹4,36,010/- on peak credit basis. Upon assessee's appeal the learned CIT(A) has noted that the sales 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.

Against above order Revenue is in appeal before the ITAT.

2. I have heard the learned Departmental Representative and perused the record. I find that in this case the sales or any other aspect of assessee looking, 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 Nickunj Eximp Enterprises (P.) Ltd. vs. ACIT [2014] 48 taxmann.com 20 (Bombay) in writ petition no. 2860 of 2012 vide order dated 18.06.2014. 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 purchases 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 purchase done by the learned CIT(A) meets the end of the justice. Accordingly, I uphold the order of the learned CIT(A).

3. The decision of NK Proteins Ltd. 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 Adam H Kazi. The appeal of Revenue is dismissed.

4. Before parting I 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 appeal can be heard together.

5. **In the result, the appeal of the Revenue stands dismissed.**

Order pronounced in the open court on 12.11.2020

Sd/-

(शमीम याहया / SHAMIM YAHYA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 12.11.2020

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS



**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**