

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

I.T.A. No. 3009/Mum/2019 (Assessment Year 2010-11)

Smt. Vaishali M. Vakharia C-702, Sai Baba Enclave CHS Ltd., Building No. 2 S.V. Road, Goregaon (W) Mumbai-400 060.  PAN : ABRPV8411E (Appellant)	Vs.	ITO-31(3)(5) C-13/405, Pratyaksha Kar Bhavan, BKC Bandra East Mumbai-400 051.  (Respondent)
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Assessee by	Shri Pramod Kumar Parida
Department by	Ms. Smita Verma
Date of Hearing	09.11.2020
Date of Pronouncement	23.11.2020

ORDER

This is an appeal by the assessee wherein the assessee is aggrieved that the learned CIT-A has erred in enhancing to 12.5% disallowance on account of bogus purchases, vide order dated 15.3.2019 pertaining to assessment year 2010-11.

2. Brief facts of the case are that assessee is an individual and runs her Fairdeal metal and cutting work. The Assessment in this case was reopened upon receipt of information from the sales tax Department that assessee has made bogus purchases. The assessee submitted the purchase vouchers and the payments were made through banking channel. However the suppliers were not produced before the assessing officer. Sales in this case were not doubted. The Assessing Officer made 100% disallowance of purchase worth Rs. 4,99,296/- and 8% disallowance out of purchases of Rs. 18,60,805/-. The total disallowance came to Rs. 6,48,160/-.

3. Upon assessee's appeal learned CIT(A) passed a peculiar order. Fairly he held that the disallowance should be @ 12.5% of the entire bogus purchases of Rs. 23,60,101/-. Thereafter he held that there should be enhancement in as much as the balance outstanding for the suppliers are bogus. Hence, Rs. 17,80,867/- added to be disallowed. Since the Assessing Officer has done a disallowance of Rs. 4,99,296/- he ordered for an enhancement of Rs. 12,81,571/-.

4. Against above order assessee is in appeal before the ITAT. I have heard both the counsel and perused the records. I find that the learned CIT(A) has passed a peculiar order. On the one hand he says that disallowance should be @ 12.5% of the entire bogus purchases. Hence, the addition comes to Rs. 1,34,390/-. On the other hand he says that balance in supplier's account are bogus. Hence, there should be enhancement of Rs. 17,80,867/-. I note that there is lack of application mind by learned CIT(A).

5. Be as it may, upon careful consideration I find that assessee has provided the documentary evidence for the purchase. Adverse inferences have been drawn due to the inability of the assessee to produce the suppliers. 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 in that case all the supplies were to government agency.

6. In the present case the facts of the 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. Hence the addition @ 8% proposed by the Assessing

Officer meets the end of justice. Hence, I direct that disallowance should be @ 8% of the bogus purchases. Learned Counsel of the assessee fairly agreed to the above.

7. In the result, assessee's appeal is partly allowed.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 23.11.2020.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 23/11/2020

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//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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