

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

I.T.A. No. 1850/Mum/2018 (Assessment Year 2010-11)

Mr. Vijaykumar Shivilal Jain Room No. 101, 2 nd Floor Badrika Ashram Building 1 st Khetwadi Lane Mumbai-400 004. PAN : ADXPJ8872B (Appellant)	Vs.	ITO-19(3)(5) Matru Mandir 2 nd Floor Tardeo Road Mumbai. (Respondent)
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Assessee by	None
Department by	Shri Somnath Wajale
Date of Hearing	05.10.2020
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 sustaining 12.5% disallowance on account of bogus purchases, vide order dated 1.1.2018 pertaining to assessment year 2010-11.

2. Another grievance raised is claim of deduction u/s 80C of Rs. 100,000/- not allowed. This appeal was earlier disposed of by the tribunal ex-party by the order dated 2.8.2018. Subsequently as result of miscellaneous application filed by the assessee the order was recalled by the MA order dated 14.2.2020. Pursuant to the recall this appeal has been heard.

3. Brief facts of the case are that assessee in this case is engaged in the business of trading in pipes fittings. 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 income tax officer in this case has made 25% addition on account of bogus purchase of Rs. 73,56,361/- resulting in disallowance of rupees 18,39,090/-.

4. Upon assessee's appeal Id CIT(A) restricted the same to 12.5% of the bogus purchase.

5. Against above order assessee is in appeal before the ITAT. I have heard the learned Departmental Representative and perused the records. The assessee remained unrepresented despite notice.

6. 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.

7. 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 nonpayment of tax and others at the expense of the exchequer. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, I find that as held by honourable High Court of Bombay in its recent judgement in the case of principle Commissioner of income tax versus M Haji Adam & Co (ITA number 1004 of 2016 dated 11/2/2019 in paragraph 8 thereof) the addition in respect of bogus purchases is to be limited to the extent of

bringing the gross profit rate on such purchases at the same rate as of other genuine purchases.

8. I respectfully following the aforesaid judgement of the honourable High Court set aside the matter to the file of the assessing officer with the direction to restrict the addition as regards the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchases. Needless to add the assessee should be granted adequate opportunity of being heard.

9. Another grievance of the assessee is that the deduction under section 80C has not been allowed, In this regard I note that assessee has submitted receipt of LIC premium paid. It will be in fitness of things if this issue is remitted to the file of assessing officer. The assessing officer shall examine the veracity of these documents and allow the reduction as per law.

10. 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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