

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA NO. 3012/MUM/2019 : **A.Y : 2009-10**

Income Tax Officer – 28(1)(1),
Mumbai. (Appellant)

Vs. Shri Ali Asgar G. Gilitwala
216A, Shiv Chamber, Sector – 11,
CBD Belapur, Navi Mumbai 400 614.
PAN : AFWPG8087J (Respondent)

Appellant by : **Ms. Smita Verma**

Respondent by : **None**

Date of Hearing : **09/11/2020**

Date of Pronouncement : **17/11/2020**

ORDER

This is an appeal by the Revenue wherein the Revenue is aggrieved that the learned Commissioner of Income Tax (Appeals) - 26, Mumbai (in short 'CIT(A)') has reduced the addition for bogus purchase of Rs.3,30,525/- done @ 29.93% by Assessing Officer by sustaining only 12.5% for the Assessment Year 2009-10 vide order dated 28.02.2019.

2. The assessee in this case is engaged in the business of trading in engineering goods. The assessment was reopened upon information from Sales Tax Department that assessee has made purchases of Rs.11,04,326/- from bogus dealers. The Assessing Officer made addition of bogus purchase @ 29.93% (at the rate of Gross Profit) resulting in disallowance of Rs.3,30,525/-.

Upon assessee's appeal, 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.

3. Against the above order, Revenue is in appeal before the ITAT. I have heard the learned DR and perused the record. 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 Hon'ble jurisdictional High Court decision in the case of Nickunj Eximp Enterprises (in Writ Petition No. 2860, 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 purchase from 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 bogus purchases done by the learned CIT(A) meets the end of justice. Accordingly, I uphold the order of learned CIT(A).

4. The decision in the case of N.K. Proteins 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.

5. In the result, this appeal filed by the Revenue stands dismissed.

6. 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 appeals can be heard together.

Order pronounced under Rule 34(4) of ITAT Rules on 17th November, 2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai, Date : 17th November, 2020

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai