

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

I.T.A. No. 3970/Mum/2019 (Assessment Year 2009-10)

Jawaharam N. Desai Gala No. 28, Bori Estate, Tilak Nagar Mumbai-400 072. PAN : AHQPD9818E (Appellant)	Vs.	ITO-26(1)(4) Mumbai (Respondent)
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Assessee by	Shri Shantilal Jain
Department by	Ms. Smita Verma
Date of Hearing	25.11.2020
Date of Pronouncement	26.11.2020

ORDER

This is an appeal 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 disallowance of Rs. 28,68,414/- on account of bogus purchases vide order dated 16.5.2017 pertaining to assessment year 2009-10.

2. Brief facts of the case are that assessee in this case is engaged in the business of trading. The Assessment in this case was reopened upon receipt of information from the sales tax Department that assessee has made bogus purchase.

3. The income tax officer in this case has made 100% addition on account of bogus purchase resulting in disallowance of Rs. 28,68,414/-.

4. Upon assessee's appeal learned CIT(A) confirmed the same by dismissing the assessee's appeal by not condoning the delay of 63 days in filing the appeal.

5. Against above order assessee appealed before the ITAT. The ITAT vide an ex-parte order confirmed the order of learned CIT(A). Vide M.A.No. 616/Mum/2019 dated 1.6.2020 the said order was recalled. Pursuant to that this appeal has been heard.

6. As regards the issue on condonation of delay I note that learned CIT(A) has clearly erred in not condoning the small delay of 63 days in filing the appeal. It has been stated that there was reasonable cause in as much as the learned Counsel of the assessee was having physical problem. In my considered opinion the delay ought to have been condoned and the same is condoned as such in the substantial interest of justice.

8. As regards the merits I have heard both the parties and perused the record.

7. Upon careful consideration I find that in this case 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.

8. 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. As regards the quantification of the profit element embedded in making of such bogus/unsubstantiated purchases by the assessee, I find that it is the submission of the assessee that it will be doubled

prejudice if the gross profit already declared is not reduced from the disallowed on account of bogus purchases.

9. Upon careful consideration I find considerable cogency in the above submissions. Accordingly I direct that disallowance in this case be restricted to 12.5% of the bogus purchase as reduced by the gross profit already declared by the assessee. Learned Counsel of the assessee fairly agreed to the above.

10. In the result the appeal stands partly allowed.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 26.11.2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 26/11/2020

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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