

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'SMC' BENCH, MUMBAI**

[Coram: Pramod Kumar (Vice President)]

ITA No. 6661/Mum/2019
Assessment Year: 2010-11

**Income Tax Officer 19(1)(3)
Mumbai.**

..... **Appellant**

Vs.

M/s. Choudhary Metal Distributors
102/8, Pravin House, 1st Pathan Street,
4th Kumbharwada Lane, Mumbai 400004
[PAN: AA AFC6149C]

..... **Respondent**

Appearances:

Sunil Deshpande for the appellant

None for the respondent

Date of concluding the hearing: : May 13, 2021

Date of pronouncement : May 19, 2021

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the Assessing Officer has challenged the correctness of the order dated 30th July 2019, passed by the learned CIT(A) in the matter of assessment u/s. 143(3) r.w.s 147 of the Income Tax Act, 1961 for the assessment year 2010-11.

2. Grievances raised by the Assessing Officer are as follows:

1. *"Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in restricting the addition to @12.5% of total bogus purchases and computing the profit for the purpose of section 28 of the I.T. Act. 1961 taking in to consideration the bogus bills against which no goods have been received?"*

2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition to @12.5% of total bogus purchases in presuming that the purchase have been made from unknown parties whereas bills have been received from hawala dealer?"*

3. *"Ld. CIT(A) erred in restricting the addition to @ 12.5% of total bogus purchases that purchases have been made from unknown parties without*

clarification how the payment was made and whether section 69 of the IT Act, 1961 will be applicable or not?"

4. "Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in not considering the order of the Hon'ble supreme court in the case M/s N.K. Protein Ltd Vs DCIT(SLA-CC Nos. 769 of 2017 dt. 16.01.2017) , which is on the similar issue of bogus purchases and when the apex court order was already the law of the land when the Ld. CIT(A) has pronounced its order on 30.07.2019?"

5. "Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred by not following the Hon'ble Gujrat High Court decision in the case of CIT vs. N K Industries (In Tax Appeal No. 240 of 2009 vide order dated 26.02.2016) wherein 100% of the bogus purchase was held liable to be added in the hands of the assessee reversing the order passed by the Hon'ble IT AT restricting addition to 25%."

3. I find that a coordinate bench of this tribunal, in the case of **Rollon Hardware India Pvt. Ltd.**, in ITA No. 1621/Mum/2018 order dated 05.11.2018, has in similar facts and circumstances inter alia, observed as follows:

4. In support of his case Ld. counsel of the assessee has placed reliance upon the decision of Hon'ble Gujarat High Court in the case of Pr. CIT Vs. T.R. Kapadia in Tax Appeal No.691 of 2017.

5. In this case the Hon'ble High Court has confirmed the deletion of disallowance on account of alleged bogus purchase as necessary documentary evidence for the purchase were on record.

6. The special leave petition against this order has been dismissed by the Hon'ble Supreme Court in its decision dated. 04.05.2018 S.L.P. Civil Diary No.12670/2018.

7. Up on careful consideration, I find that assessee has provided the documentary evidence for the purchase. Adverse inference 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 rational being no sales is possible without actual purchases. This proposition is supported from Hon'ble Jurisdictional High Court decision in the case of Nikunj eximp enterprises (in writ petition no. 2860, order dt. 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, in that case all the suppliers were government agency. 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 expenses of the exchequer. In such situation in my considered opinion on the facts and circumstances of the case the 12.5% disallowance out of the bogus purchases meets the end of justice. However, in this regard Ld. counsel of the assessee has prayed that when only the profits earned by the assessee on these bogus purchase transaction is to be taxed the gross profit

already shown by the assessee and offered to tax should be reduced from the standard 12.5% being directed to be disallowed on account of bogus purchase.

4. I see no reasons to take any other view of the matter than the view so taken by the coordinate bench. Respectfully following the coordinate bench order, I confirm action of the CIT(A) and decline to interfere in the matter.

5. In the result, this appeal is dismissed. Pronounced in the open court today on the 19th day of May 2021.

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 19th day of May 2021.

Copies to: (1) *The Applicant* (2) *The respondent*
 (3) *CIT* (4) *CIT(A)*
 (5) *DR* (6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai