

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

[Coram: Pramod Kumar (Vice President)]

ITA No. 7354/Mum/2019
Assessment Year: 2011-12

**Income Tax Officer 22(1)(6)
Mumbai.**

..... **Appellant**

Vs.

Abdul Rauf Bilal Ahemd
*Room No. 18, Noorani Building, 3rd Floor,
Cadle Road, Mahim West, Mumbai 400016
[PAN: AATPB3087H]*

.....**Respondent**

Appearances:

Sunil Deshpande *for the appellant*

Sultania Subhas *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 04th September 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 2011-12.

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

1. On the facts and circumstances of the case and in law , the Ld CIT (A) erred in ignoring the latest decision of the Supreme Court in the case of M/s. N.K Proteins Ltd. Vs. CIT in SLP No. 759 of 2017 dated 16.01.2017(SC) wherein the Hon'ble Supreme Court has decided the issue of bogus purchase with a direction of making addition amounting to entire bogus purchases as the assessee's income.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the bogus purchases of Rs. 8,33,056/- without appreciating the fact that any expenditure not found to be incurred at all, least of all that the same is also not laid out or expended wholly and exclusively for the purpose of business is not admissible in terms of provisions of section 37 of the Income Tax Act.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the fact that onus is on the assessee to explain and substantial the genuineness and true nature of purchase transaction.

4. The appellant prays that appeal is filed because it is covered under the exception provided in para 10(e) of the CBDT's Circular No.3 of 2018 dtd. 11.07.2018 as amended vide F.No. 279/Misc. 142/2007 -ITJ(pt) dtd. 20.08.2018.

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)	<i>The Applicant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai