

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

I.T.A. No. 5315/Mum/2019  
(Assessment Year 2010-11)  
&  
I.T.A. No. 5316/Mum/2019  
(Assessment Year 2011-12)

Himmatlal G.Thakkar 55-E, Kedarnath Chawl, Dr.Ambedkar Road Khar West,  PAN : AAAPT4805A	Vs.	ITO, Ward-22(1)(5) Piramal Chamber Lower Parel Mumbai-400 013
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Anoop-DR
Date of Hearing	19.05.2021
Date of Pronouncement	01.07.2021

O R D E R

Per Shamim Yahya (AM) :-

These are appeals by the Assessee wherein the assessee is aggrieved that the Ld.CIT(A) has erred in sustaining 12.5% disallowance on account of bogus purchases vide common order dated 09.05.2019.

2. Brief facts of the case are that assessee is engaged in the business of printing Information was received from the Sales tax Department that assessee has engaged in bogus purchases. The assessment was accordingly reopened. Except for bank statement assessee did not provide any evidence in support of the purchases. Even, the purchase bills were not provided to AO.

3. The AO in this case has made 15.08% addition on account of bogus purchase. The disallowance came to Rs.8,35,389/- for AY 2010-11 and Rs.16,96,623 for AY 2011-12. Upon assessee's appeal Ld.CIT(A) reduced the same to 12.5%.
4. Against the above order, assessee is in appeal before the ITAT. We have heard the Ld. DR and perused the record.
5. Upon careful consideration, we find that the assessee has not provided any documentary evidence for the purchase. Adverse inference have also been drawn due to the inability of the assessee to produce the suppliers. However, we note that the sales have not been doubted. It is settled law that when sales are not doubted, 100% 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 Nikunj Eximp Enterprises (in Writ Petition No.2860, order dated 18.06.2014). In this case, the Hon'ble High Court has upheld 100% allowance for the purchases said to be bogus, when sales are not doubted. However, in that case all the supplies were to 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 expense 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.
6. Hence, we affirm the order of Ld.CIT(A)
7. In the result, assessee's appeals are dismissed.

Pronounced in the open court on 01.07.2021

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 01/07/2021

Sr.PS. Thirumalesh

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