

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

I.T.A. No. 5311/Mum/2019 (Assessment Year 2010-11)

A B Corporation 203C Wing, Poonam Estate Cluster III, Shisti Opp.Surya Shopping Complex, Shruti Garden Mira Road (East) Mumbai-401 107 PAN : AAMFA4306K (Appellant)	Vs.	ITO-20(1)(1) Piramal Chamber Mumbai-400 012 (Respondent)
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Assessee by	None
Department by	Shri Anoop
Date of Hearing	19.05.2021
Date of Pronouncement	01.07.2021

O R D E R

Per Shamim Yahya (AM) :-

This is an appeal 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 order dated.14.06.2019.

2. Brief facts of the case are that assessee is engaged in the business of trade in jewellery tools. AO's action in this case is under:

4.1 On the basis of information received from the DGIT(Inv.), Mumbai that the Sales Tax Department had carried out investigation on various hawala operators who were known to be issuing accommodation entries bills to various parties and the appellant is one of the beneficiary who have taken accommodation entry, purchase bills without physical delivery of the goods or by manipulating documents for such purchases, the case was reopened by issued of notice u/s. 148 on 03.03.2015. The assessee has entered into hawala transactions aggregating to Rs. 30,22,397/- from following parties.

Sr. No.	Name of the concerns	Amount(Rs.)
1.	M/s. Saileela Trading P. Ltd.,	77,940
2.	M/s. Sthapna Trade Impex P. Ltd.	1,42,758
3.	M/s. Laxman Sales P. Ltd.,	46,451
4.	M/s. Mihir Sales P. Ltd.,	1,09,368
5.	M/s. Smartlink Traders	34,484
6.	M/s. K.C. Enterprises	47,587
7. _ ,	M/s. Motion Traders P.Ltd.,	2,01,811
8	M/s. Shree Sarsawati P. Ltd.,	2,28,917
9	M/s. Snehla Enterprises	88,446 ,
10	M/s. Eveready Marketing P. Ltd.,	3,80,893
11	M/s. Seva Enterprises	4,64,870
12	M/s. Abhilasha Sales Pvt. Ltd.,	6,99,084
13	M/s. Kalpataru Trading Co.	2,83,139
14 ,	M/s. Meridian Sales Agency P. Ltd.	51,630
15	M/s. Ashley Traders P, Ltd.,	1,65,119
	Total	30,22,397

Notice u/s. 133(6) dated 18.12.2015 were issued to the above parties, but the notices were returned back by the postal authority with the remark "not known", "no such address", "left" etc. The A.O on perusal of the information available on record and the inquiries carried out, considered that the hawala parties have not carried out any legitimate business from the premises as supra and that such parties have not delivered any material to the assessee and that such parties had only given accommodation entries to the assessee to conceal the particulars of income to evade the payment of taxes. During the course assessment proceedings, the assessee was asked to produce the supporting documents being copy of ledger account, copy of invoices, copy of delivery challan, copy of lorry receipts, copy of bank statements, copy of octroi receipts and copy of goods receipts goods inward and outward details. Further, the assessee was also asked

the produce the parties on or before 03.02.2016 to prove the genuineness of purchase from the above said parties. The assessee failed to produce the said parties. The A.O has observed that the assessee has taken accommodation bills to account for the purchases from the grey market and in the process has benefited by way of inflation in purchases as per the bills. The AO has relied on the decision in the case of CIT vs. Simit P. Sheth 38 taxman.com 385 (Guj.) in which case it was held by the Hon'ble ITAT Ahmedabad Bench that the malpractice of bogus purchase was mainly to save the sales tax and the profit margin. The A.O has estimated the element of profit margin in respect of non genuine purchase @12.5% and made an addition of Rs. 377,800/- to the total income of the appellant.

3. Before the Ld.CIT(A) that assessee inter alia submitted as under:

“5) The GP rate for the year under Appeal is 16.61% whereas GP rate for the previous three years are much lower as under:-

A.Y. 2007-08	
A.Y. 2008-09	12.88%
A.Y. 2009-10	12.64%

4. However,, Ld.CIT(A) was not convinced. He held as under:-

4.3.2 Considering that the appellant was able to correlate the purchases of materials with their sale, the AO has rightly held that the appellant must have purchased the material from grey market and the actual purchase bills, in the nature of accommodation bills would have been inflated, since the appellant would have had savings from such purchases on account of vat, cash discount and lower rates. The AO has made an addition in respect of profit element on such purchases @ 12.5%, which appears to be reasonable and fair considering that the VAT rate on items of the purchase of jewellery' tools, as stated by the AR of the appellant, is 12.5%. In my considered opinion, no interference is called for in respect of the addition made. Accordingly, the addition made by the A.O of Rs. 3,77,800/~ is upheld. **The grounds taken by the appellant are dismissed.**

5. Upon careful consideration, we find that the 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. We find that in this case, 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 our 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, we note that the assessee has prayed before Ld.CIT(A) that the gross profit already shown by the assessee and offered to tax is more than 12.5%.

6. Upon careful consideration, we find that 12.5% addition has been sustained for the purpose of the taxing the profit on these purchases. When assessee has already shown gross profit at more than again adding 12.5% taxing further 12.5% will be double jeopardy to the assessee. Accordingly, we modify the order of Ld.CIT(A) and direct that the disallowance in this case be restricted to 12.5% of the bogus purchases as reduced by the gross profit rate already declared by the assessee on these transactions.

7. In the result, this appeal filed by the assessee stands partly allowed.

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