

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai
Before Hon’ble Justice P.P. Bhatt (President) &
Hon’ble Shri Shamim Yahya (Accountant Member)

I.T.A. No. 6176/Mum/2019 (Assessment Year 2010-11)

DCIT-10(2)(2) Room No. 216-A Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Manik Machinery Manufacturers Pvt. Ltd. 24, Sonal Udyog, Parsi Panchayat Road, Andheri East Mumbai-400 069. PAN : AAACM4260F
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Bharat Andhle
Date of Hearing	05.07.2021
Date of Pronouncement	13 .07.2021

O R D E R

Per Shamim Yahya (AM) :-

This is an appeal by the Revenue wherein the assessee is aggrieved that the learned CIT(A) has erred in sustaining only 12.5% disallowance on account of bogus purchases, vide order dated 29.7.2019 pertaining to assessment year 2010-11.

2. Brief facts of the case are that assessee in this case is engaged in the business of manufacturing of various types of spray guns. The Assessment in this case was reopened upon receipt of information from the sales tax Department that assessee has made bogus purchases. The assessee submitted the purchase vouchers and the payments were made through banking channel. However the suppliers were not produced before the assessing officer. Sales in this case were not doubted. The income tax officer in this case has made 100% addition on account of bogus purchase resulting in disallowance of Rupees 1,41,39,860/-.

3. Upon assessee’s appeal learned CIT(A) restricted the same to 12.5%.

4. Against above order assessee is in appeal before the ITAT.

5. We have heard learned Departmental Representative and perused the record. Upon careful consideration we find that assessee has provided the documentary evidence for the purchase. Adverse inference has 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, 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 dated 18.6.2014). In this case the honourable High Court has upheld hundred percent allowances 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 these circumstances in our considered opinion the disallowance of 12.5% meets the ends of justice. The decision of N.K. Proteins Ltd.(250 ITR 22) relied by the Revenue in the grounds of appeal has been duly distinguished and explained by Hon'ble Bombay High Court in the case of M. Hazi Adam & Co. (ITA No. 1004 of 2006 dated 11.2.2019).

6. In the result this appeal filed by the Revenue stands dismissed.

Pronounced in the open court on 13.07.2021

Sd/-
(JUSTICE P.P. BHATT)
PRESIDENT

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 13 /07/2021

Copy of the Order forwarded to :

*M/s. Manik Machinery
Manufacturers Pvt. Ltd.*

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

PS