

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

I.T.A. No. 7405/Mum/2019 (Assessment Year 2010-11)
I.T.A. No. 7406/Mum/2019 (Assessment Year 2011-12)

ITO-26(2)(4) Room No. 318 3 rd Floor Kautilya Bhavan Bandra Kurla Complex Bandra East Mumbai-400 051. (Appellant)	Vs.	Pradeepkumar R. Sharma Unit No. A-29, Ansa Industrial Estate, Sakivihar Road Mumbai-400 072. PAN : ABEPS9973P (Respondent)
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Assessee by	Shri Paras Salva
Department by	Shri Anoop
Date of Hearing	17.05.2021
Date of Pronouncement	01.07.2021

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the Revenue against respective order of learned CIT(A) for A.Y. 2010-11 & 2011-12.

2. The common issue raised is :-

" Whether on the facts and the circumstances of the case and In law, the Ld. CIT(A) has erred in restricting the disallowance on account of bogus purchases @12.5% as against @100% made by the AO for the A. Y. 2010-11?"

3. Since facts are identical we refer to order of Assessing Officer and learned CIT(A) for A.Y. 2010-11. Brief facts are that the assessee firm is engaged in the business of trading. The assessee has filed his return of income on 25.9.2010 declaring total income of Rs. 4,78,300/-. The return of income was processed U/S 143(1) of the Act. Subsequently, the case was reopened u/s. 147 of the Act on 09.02.2015 on the basis of information received from Sales Tax Department Government of Maharashtra through DGIT(Inv.), Mumbai that during the year under consideration, the assessee had entered

into Hawala Transactions for purchases with bogus transaction amounting to Rs. 10,73,699/- from various parties as per data provided by the Sales Tax Department during the F.Y. 2009-10 relevant to A.Y. 2010-11 which were not genuine. Therefore, notice u/s. 148 issued on 09.02.2015 and served upon the assessee. Subsequently, notice u/s. 143(2) & 142(1) of the Act was issued to the assessee. However, assessee has not attended even after several opportunities given by the AO. Hence, the assessment was completed u/s. 144 of the Income Tax Act, 1961 on 28.01.2016 determining total income at Rs. 16,23,440/- with an addition on account of bogus purchases of Rs.10,73,699/.

4. Before learned CIT(A) the invoice of purchase and bank statement were also furnished. Learned CIT(A) obtained remand from the Assessing Officer, who repeated the addition. Learned CIT(A) however, placing reliance upon several case laws restricted the addition to 12.5% of bogus purchases.

5. Against the above order the Revenue are in appeals before the ITAT.

6. We have heard both the parties and perused the records. Upon careful consideration we find that assessee has provided the documentary evidence for the purchase. Adverse inferences 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, 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 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.

7. As regards the decision of N.K. Proteins Ltd. referred by the Revenue in grounds of appeal, we find that the same has been duly explained by Hon'ble Bombay High Court in the case of M. Hazi Adam & Co. (ITA No. 1004 of 2006 dated 11.2.2019).

8. Our above adjudication applies mutatis mutandis to appeal for A.Y. 2011-12.

9. In the result, these appeals are dismissed.

Pronounced in the open court on 1.7.2021.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 01/07/2021

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//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai