

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

I.T.A. No. 6792/Mum/2019 (Assessment Year 2009-10)
I.T.A. No. 6793/Mum/2019 (Assessment Year 2010-11)
I.T.A. No. 6794/Mum/2019 (Assessment Year 2011-12)

ACIT-22(1) 322, 3 rd Floor Pirmal Chambers Lal Baug, Parel Mumbai-400 012.	Vs.	Gautam Narain Wadhvani C-2/11, Samruddhi Cooperative Housing Society, Baburao Parulekar Marg, Dadar West Mumbai-400 028. PAN : AAEPW4414C
(Appellant)		(Respondent)

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

ORDER

Per Shamim Yahya (AM) :-

These are appeals by revenue against common order of Ld CIT(A) wherein the revenue is aggrieved that the learned CIT(A) has erred in sustaining only 25% percent disallowance on account of bogus purchases, vide order dated 7.8.2019 pertaining to the above assessment years.

2. Since facts are identical we are referring to facts and figures from Assessment year 2009-10.

3. Brief facts are that the assessee was proprietor of M/s. Sagittaire carrying on its business of execution of works contract of all types of contract like civil contract & other furniture contracts. Return of income has been filed on 17.09.2009 declaring total income at Rs.13,51,260/-. The AO received information from Maharashtra Sales Tax Department regarding fictitious purchases made by the appellant from M/s. Dharmesh Trading Co, M/s. Vinay Trading Co and Om Enterprises. Hence, the case was re-opened. The assessee

filed copies of invoices, ledger and bank statements showing payments through account payee cheques and stated that it had purchased Pole MCB and Brass Spring Hinges of Rs. 4,46,399/- from the aforesaid three parties which was used in its business for which payments have been received by cheques.

4. According to the AO, as per information from the Maharashtra VAT Department through DGIT (Inv.), the aforesaid parties are bogus suppliers and merely provide bills to the assessee without delivery of goods. No response to notice issued u/s. 133(6) was received. The assessee has not been able to prove the direct correlation between purchases and corresponding sales. Accordingly, the AO by relying on several judgements treated these purchases as bogus and added entire purchases made from these parties i.e. 4,46,399/- to the total income of the assessee.

5. Upon assessee's appeal learned CIT(A) granted part relief by holding as under :

"I have carefully gone through the above submissions made by the appellant and the facts mentioned in the assessment order. The purchases claimed from the three suppliers have been correctly treated by the AO as non-genuine in view of findings of the Sales Tax Department and no response from the parties in response to notice u/s 133(6). As a result, the rate and quantity of actual purchase could not be verified as the parties under consideration have issued only invoices.

Considering the totality of facts, I am of the view that addition of entire purchase is not justified unless it is proved that the payments made by the appellant was returned in cash or unless it is proved that the appellant has not made any purchase from any other party. It is found that there is no conclusive evidence to say any of above. In such a situation, as the quantity and rate of purchase could not be verified due to non-availability of the supplier, certain percentage of purchase should only be disallowed which will be equivalent to additional profit earned by the assessee on account of obtaining bills from hawala party and purchasing goods from grey market. Considering the totality of facts, I find it fair to estimate additional profit @ 25 % of bogus purchase which needs to be added to total income of the appellant. In view of above, addition of Rs. 1,11,6007- being 25 % of Rs. 4,46,399/- is sustained and balance addition of Rs.3,34,799/- is hereby deleted."

6. Against above order Revenue is in appeals before the ITAT. We have heard learned Departmental Representative and perused the records.

7. 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 or other aspects of assessee's working 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.

8. 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 circumstances in our considered opinion the disallowance sustained by learned CIT(A) serves the interest of justice. Hence we uphold the order of learned CIT(A). The decision of N.K. Proteins Ltd.(250 ITR 22) referred by the Revenue in the grounds of appeal has already been 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).

9. In the result these appeals filed by the Revenue stand 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//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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