

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

I.T.A. No. 6790/Mum/2019 (Assessment Year 2009-10)

ACIT-22(1) 322, 3 rd Floor Pirmal Chambers Lal Baug, Parel Mumbai-400 012.	Vs.	Aumex International 24, Adhyaru Industrial Estate Sun Mill Compound Lower Parel Mumbai-400 013. PAN : AAIFA9726B
(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) :-

This is an appeal by the revenue wherein the assessee is aggrieved that the learned CIT-A has erred in sustaining only 25% disallowance on account of bogus purchases vide order dated 19.8.2019.

2. Brief facts are that the assessee e-filed return of income on 27/09/2009 declaring total income at Rs.30,94,459/-. Subsequently in the instant case, information was received from Sales Tax/VAT Department that assessee had made fictitious purchases of the plastic bags of Rs. 58.761/- from the M/s. Balaji Trading. The assessee has claimed that the Plastic bags were purchased from the above party and it was used in this business and the payment has been made by account payee cheque. Copy of invoice, ledger and bank statement was filed. Further, notices u/s. 133(6) was issued to M/s. Balaji Trading, calling for certain details. However, no response from M/s. Balaji Trading was received. Hence, the AO considered the transactions in respect of

purchases were not genuine, and added Rs.58,761/- being 100% of the purchases made.

3. Upon assessee's appeal learned CIT(A) restricted the disallowance to 25%.

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

5. We have heard learned Departmental Representative and perused the records. 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 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 disallowance out of the bogus purchases meets the end 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).

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

PS