

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'B' BENCH, MUMBAI**

**[Coram: Justice P. P. Bhatt (President)
And Pramod Kumar (Vice President)]**

ITA No. 6554/Mum/2019
Assessment Year: 2010-11

**Deputy Commissioner of Income Tax 9(2)(1)
Mumbai.**

..... Appellant

Vs.

M/s. B Chopda Constructions Pvt. Ltd.,
*A-208, Sagar Tech Plaza, Sakinaka Junction,
Andheri, Mumbai 400072 [PAN: AACCB4214G]*

.....Respondent

Appearances:

Tharian Oommen for the appellant

None for the respondent

Date of concluding the hearing: : July 01, 2021

Date of pronouncement : July 01, 2021

O R D E R

Per Bench:

1. By way of this appeal, the Assessing Officer has challenged the correctness of the order dated 3rd October 2019, passed by the learned CIT(A) in the matter of assessment u/s. 143(3) r.w.s 147 of the Income Tax Act, 1961 for the assessment year 2010-11.

2. Grievances raised by the Assessing Officer are as follows:

(1) "Whether on the facts and in the circumstances of the case and m law, the Ld CIT (A) was justified in restricting the suppressed profit to the extent of 12.50% of bogus purchases without appreciating the fact that the assessee could not produce any parties or evidence that the said goods were purchases and the onus of providing genuineness of purchases was not discharged by the assessee?"

(2) "Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) was justified in deleting the addition made on account of purchases made from the bogus entity without appreciating the fact that in view of the Hon'ble Supreme Court decision in the case of M/s. N.K Proteins Ltd.. Wherein the Apex Court (in SLP CC No. 769/2017) has upheld the decision of the Gujarat High Court sustaining the addition on account of bogus purchases"

3. We find that a coordinate bench of this tribunal, in the case of *Rollon Hardware India Pvt. Ltd.*, in ITA No. 1621/Mum/2018 order dated 05.11.2018, has in similar facts and circumstances inter alia, observed as follows:

4. In support of his case Ld. counsel of the assessee has placed reliance upon the decision of Hon'ble Gujarat High Court in the case of Pr. CIT Vs. T.R. Kapadia in Tax Appeal No.691 of 2017.

5. In this case the Hon'ble High Court has confirmed the deletion of disallowance on account of alleged bogus purchase as necessary documentary evidence for the purchase were on record.

6. The special leave petition against this order has been dismissed by the Hon'ble Supreme Court in its decision dated. 04.05.2018 S.L.P. Civil Diary No.12670/2018.

7. Up on careful consideration, I find that 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. I 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 rational 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 dt. 18.06.2014. In this case the Hon'ble 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 suppliers were 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 expenses of the exchequer. In such situation in my 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 Ld. counsel of the assessee has prayed that when only the profits earned by the assessee on these bogus purchase transaction is to be taxed the gross profit already shown by the assessee and offered to tax should be reduced from the standard 12.5% being directed to be disallowed on account of bogus purchase.

4. We see no reasons to take any other view of the matter than the view so taken by the coordinate bench. Respectfully following the coordinate bench order, We confirm action of the CIT(A) and decline to interfere in the matter.

5. In the result, this appeal is dismissed. Pronounced in the open court today on the 01st day of July 2021.

Sd/-
Justice P. P. Bhatt
(President)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 01st day of July 2021.

Copies to:

(1)	<i>The Applicant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*